

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CHARLES SOUTHERLAND
Claimant

APPEAL NO: 13A-UI-12729-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEXINGTON SQUARE LLC
Employer

**OC: 10/20/13
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 12, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 6, 2013. The claimant did not respond to the hearing notice by providing a phone number where he could be reached at the date and time of the hearing as evidenced by the absence of his name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The claimant did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Christine Hopson, Administrator and Kathy Donahue, Human Resources Coordinator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time activities assistant for Lexington Square from October 30, 2012 to October 15, 2013. He was discharged for driving a company vehicle on several occasions without a valid drivers' license.

On October 10, 2013, the claimant's estranged wife contacted the employer and told it the claimant did not have a valid driver's license and had not had one for several years. Approximately 10 percent of the claimant's job involved driving residents in the employer's vehicles. The employer checked with the claimant's previous state of residence, Illinois, and learned he did not have a driver's license there at the time he accepted this position and when it looked at his personnel file it discovered he had presented the employer with a state issued identification card rather than a driver's license. On October 15, 2013, the employer met with the claimant about the situation. The claimant stated he had a valid driver's license but did not

have it with him, had not carried it with him for years, and consequently could not show it to the employer at that time. Administrator Christine Hopson asked the claimant why he had not provided his driver's license to the employer when asked at the time of hire and the claimant stated it was because he "didn't carry it on (him)." Ms. Hopson then asked the claimant to produce a valid driver's license by the end of the day. The claimant was angry and defensive and Ms. Hopson told him the employer was suspending him until he could show one because state and federal law mandated he possess a valid driver's license. Ms. Hopson left the room to use the restroom and when she returned the claimant had left, leaving Human Resources Coordinator Kathy Donahue alone in the room. Ms. Donahue told Ms. Hopson the claimant stood up, threw down his keys and said, "I'll make this easy. I will just quit," before walking out. He called the employer approximately one hour later and said he had decided to accept the suspension and would provide his driver's license but when the employer tried to call him back he would not answer its calls. The employer was willing to work with the claimant about his driver's license situation but the claimant refused to talk to the employer before quitting and then would not take the employer's return phone calls.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

The administrative law judge takes official notice of the administrative file. The employer participated personally in the fact-finding interview about this case.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant did not have a valid driver's license and was not honest about the situation when confronted with the information that he had been driving the residents in the employer's vehicle. If he had a driver's license, as he told the employer during the October 15, 2013, meeting, he would have been able to produce it on that date but chose to quit his job instead because he was caught by the employer in stating he did have a license. The claimant's wife told the employer he had not had one for 15 years. Most, if not all, drivers know that they are required to renew their driver's licenses at least every six to eight years, if not prior to that. Failure to have a driver's license for that period of time shows the claimant knowingly drove without a driver's license and used a state identification card rather than a driver's license when the employer requested one at the time of hire. Because the claimant needed a driver's license to

perform the essential functions of his job, had driven without a license which exposed the employer to liability, and was not forthcoming about the situation when questioned by the employer, the administrative law judge must conclude the claimant's actions rise to the level of disqualifying job misconduct. However, the claimant chose to quit his job when confronted about his failure to have a license and he has not provided any evidence establishing that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

871 IAC 24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an

entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The claimant is overpaid unemployment insurance benefits in the amount of \$1,379.00.

DECISION:

The November 12, 2013, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,379.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs