

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DUSTIN P MCCUTCHEON  
347 – 5<sup>TH</sup> AVE N  
CLINTON IA 52732

AMERICAN RIVER TRANSPORTATION CO  
C/O FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-04932-BT  
OC: 03/21/04 R: 04  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

American River Transportation Company (employer) appealed an unemployment insurance decision dated April 19, 2004, reference 04, which held that Dustin McCutcheon (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 24, 2004. The claimant participated in the hearing. The employer participated through Manager Tom Littlejohn.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time deckhand from March 18, 2003 through August 25, 2003. He voluntarily quit his employment because he no longer felt safe or wanted to work with a mate, who was aging and in poor health. The mate had bad knees and a bad shoulder. The claimant also believed the man to be a severe alcoholic. The claimant and his mate would be pulling a line in, when the mate would let go due to pain, and the claimant would almost get jerked into the water. The claimant spoke to his captain about the problem and quit after nothing was done. The claimant never spoke to anyone else about the problem and the manager knew nothing about the situation. The manager could have easily transferred the claimant to another boat if he had known a problem existed. The manager only knew the claimant was a no-call/no-show for three days in a row beginning on August 26, 2004 and he was discharged on August 28, 2004.

The claimant filed a claim for unemployment insurance benefits effective March 21, 2004 and has received benefits after the separation from employment in the amount of \$2,064.00.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

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.

The claimant voluntarily quit on March 25, 2004. He has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code Section 96.6-2. The claimant quit his employment due to detrimental working conditions since he did not feel safe working with a particular mate. The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). In order to show good cause for leaving employment based on intolerable or detrimental working conditions, an employee is required to take the reasonable step of informing the employer about the conditions the employee believes are intolerable or detrimental and that he intends to quit unless the conditions are corrected. The employer must be allowed the chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). In the case herein, the claimant never gave notice to quit nor did he talk to the manager about the issue even though the manager was available. The situation could have been resolved had the claimant wanted to preserve his employment. Inasmuch as the claimant did not give the employer an opportunity to resolve his complaints, the separation was without good cause attributable to the employer. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in

good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated April 19, 2004, reference 04, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,064.00.

sdb/kjf