

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTIAN T VANZEE
Claimant

APPEAL NO: 14A-UI-09057-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIED OIL & SUPPLY INC
Employer

OC: 08/03/14
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 22, 2014 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive benefits. The claimant participated at the September 22 hearing. Rod Hoover, the district operations manager, and Joe Farrell, the service manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

Has the claimant been overpaid benefits he has received since August 3, 2014?

Is the claimant or the employer responsible for paying back any overpayment of benefits?

FINDINGS OF FACT:

The claimant started working for the employer in April 2013. He worked as a full-time tire technician. In early 2014, another employee became upset with the claimant and grabbed at the claimant's throat. The claimant reported this incident to Farrell. Farrell told the claimant he would take of this, which he did. Farrell talked to the other employee and there were no other issues between this employee and the claimant.

On May 9, 2014, the employer assigned the claimant and his uncle, another employee, to work on 16 tire trucks. Shortly after the claimant and his uncle arrived at the job site, the claimant became upset because he disagreed with the way his uncle wanted to do the work. The claimant called the employer very upset. Even though the claimant told Farrell he was going to leave the job because he was very upset, Farrell asked him three times not to walk off the job. Farrell told the claimant that after the job was completed; the three of them would talk and resolve the issue between him and his uncle. The claimant walked off the job.

A short time later that morning, the claimant went to the employer's office and told the employer in-person that he quit. Later when the claimant asked the employer for his job back, the employer told the claimant the employer could not rehire an employee who walked off the job.

The claimant established a claim for benefits during the week of August 3, 2014. The claimant filed claims for the weeks ending August 9 through September 20, 2014. The claimant received his maximum weekly benefit amount of \$416 for each of these weeks.

The claimant participated at the fact-finding interview, but the employer did not.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant quits with good cause when he leaves because of unsafe working conditions. 871 IAC 24.26(2). Even though the claimant asserted he quit because his uncle threw a tool at his feet, the May 9 incident does not establish unsafe working conditions or good cause to quit. The claimant was very upset when on May 9 when he walked off the job. The claimant did not establish that he quit for reasons that qualify him to receive benefits. As of May 9, 2014, the claimant is not qualified to receive benefits.

Based on the decision in this case, the claimant is not legally entitled to receive benefits as of August 3, 2014. If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). The claimant has been overpaid \$2,912 in benefits he received for the weeks ending August 9 through September 20, 2014.

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 employer did not participate at the fact-finding interview. Therefore, the employer's account will be charged for the \$2,912 overpayment and the claimant does owe the Department any money.

DECISION:

The representative's August 22, 2014 determination (reference 02) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. As of May 9, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

The claimant has been overpaid \$2,912 in benefits he received for the weeks ending August 9 through September 20, 2014. Since the employer did not participate at the fact-finding interview, the employer's account will be charged \$2,912 and the claimant is not required to pay back this amount.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css