

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOWARD BUSHMAN
Claimant

APPEAL NO. 07A-UI-00374-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAX SMITH CONSTRUCTION CO INC
Employer

**OC: 12/10/06 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Max Smith Construction Company (employer) appealed an unemployment insurance decision dated January 8, 2007, reference 01, which held that Howard Bushman (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 January 29, 2007. The claimant participated in the hearing. The employer participated through owner Max Smith. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time seasonal truck driver from approximately 2003 through July 24, 2006, when he voluntarily quit. He worked on an on-call basis and the work demand had been lighter this year. The employer contracted with a couple different companies over the years but had most recently leased the use of the truck to McDermott Excavating. The employer called the claimant when work was available; and if no work was available, the claimant called McDermott to find additional work. The employer no longer wanted to work with McDermott Excavating and had no work for the claimant for a couple weeks. The employer testified that this was not unusual and the claimant was never employed full-time. The intermittent work had always worked out well for both since the claimant received a pension from his former employer and did not want to work full-time. However, when the employer did not call him, the claimant questioned the employer about what they were doing

with the truck. The employer told him it was just not worth it, they did not make enough money with McDermott and McDermott was behind on its bill anyway. The employer did not specifically state he no longer wanted to work with McDermott and the claimant never specifically asked him what that comment meant. However, since the claimant did not have any work available at that time, he turned in his keys on July 24, 2006 and said, "It's time to move on." The employer had to hire another driver to replace the claimant.

The claimant filed a claim for unemployment insurance benefits effective December 10, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by turning in the truck keys to the employer and saying, "It's time to move on." Had he not turned the keys in, he would still be employed at the same contract of hire as before. The employer did not discharge the claimant and had to hire another driver to take his place.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and 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 January 8, 2007, reference 01, 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 \$1,116.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw