

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD COUNTER
Claimant

APPEAL NO: 13A-UI-08830-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GUARANTEE ROOFING & SIDING CO
Employer

OC: 06/23/13
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

Guarantee Roofing & Siding Company (employer) appealed an unemployment insurance decision dated July 22, 2013, reference 01, which held that Ronald Counter (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 September 5, 2013. The claimant participated in the hearing. The employer participated through managing partner Charese Yanney. The separation issues were inadvertently left off the hearing notice. Both parties waived their right to a formal notice of these issues so they could be addressed in the hearing today. These issues included whether the claimant was discharged for work-related misconduct and/or whether he voluntarily left his employment with good cause attributable to the employer.

ISSUE:

The issue is whether the claimant's separation qualifies him to receive unemployment insurance benefits.

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 salesperson from May 4, 1998 through June 3, 2013. The employer sells roofing, insulation, windows, doors, shutters, siding and decks. The claimant was not comfortable selling the other products and had always sold roofing products.

The claimant is a 70-year-old man who has bursitis in his hip and shuffles when he walks. He has had cancer and received radiation treatment in his hips, which caused a lot of scar tissue. The claimant continues to seek medical treatment for his hips. The employer noticed he has trouble getting into and out of the employer's trucks and due to the potential for injury to himself and others, the employer made a change in the claimant's employment. For the last year and a half, the claimant was no longer allowed to climb onto roofs to obtain measurements. He

continued working in the same capacity but had other employees climb onto the roofs to get the measurements for him. This worked fine until June 2013 when the other employee wanted too much money to help the claimant. A meeting was held on June 3, 2013 and the employer advised the claimant he could sell other products but no longer wanted him to work with roofing products. The claimant never returned to work after that date even though he still possesses a key to the employer's property.

The claimant filed a claim for unemployment insurance benefits effective June 23, 2013 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be determined is whether the claimant is on a short-term layoff. All terminations of employment are generally classifiable as layoffs, quits, discharges, or other separations. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for lack of work and various other reasons. See 871 IAC 24.1(113)a. The claimant was not on a short-term lay off because work was available and the separation was not initiated by the employer.

The claimant 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 failing to return to work after June 3, 2013 even though work was available.

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.

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 matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated July 22, 2013, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css