

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HERRARDO V RUAN**  
Claimant

**APPEAL NO. 07A-UI-07490-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARDWICK LAWN & LANDSCAPE**  
Employer

**OC: 06/24/07 R: 03  
Claimant: Respondent (4)**

Section 96.5(1) – Quit  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Hardwick Lawn and Landscape (Hardwick), filed an appeal from a decision dated July 26, 2007, reference 02. The decision allowed benefits to the claimant, Herrardo Ruan. After due notice was issued, a hearing was held by telephone conference call on August 27, 2007. The claimant participated on his own behalf. The employer participated by Owner Scott Hardwick.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Herrardo Ruan was employed by Hardwick from April 6 until June 20, 2007, as a laborer. He was hired full-time but was reduced to part-time effective June 15, 2007, because of poor work performance. He was trained on how to do the work he was assigned to do, shown by Owner Scott Hardwick and at least two other supervisors, but continuously failed to perform the work as required. His poor work cost the employer two clients who were dissatisfied with the work being done.

He was reduced to part-time because the amount of work he could do was so limited that the employer could not employ him full-time. On June 20, 2007, he told the employer he was quitting and giving a two-week notice because he could not pay the bills with what he earned from part-time work. The employer released him effective immediately.

Herrardo Ruan has received unemployment benefits since filing a claim with an effective date of June 24, 2007.

## REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(38) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The claimant was reduced to part-time because of his continued failure to do the job he was assigned to do, even though he had been shown numerous times how to do the work by supervisors and cost the employer at least two clients. This is conduct not in the best interests of the employer. When an employer demotes an employee for misconduct warranting discharge, an employee who subsequently leaves employment does so without good cause attributable to the employer, and is disqualified from receiving unemployment benefits. Goodwin v. BPS Guard Services, Inc., 524 N.W.2d 28 (Minn. App. 1994). The claimant's decision to resign was based on the demotion which could have been grounds for discharge. Therefore, his quit was without good cause attributable to the employer and he is disqualified.

The employer released the claimant prior to the end of the two-week notice period. This would make the claimant eligible for benefits for the one-week period ending June 30, 2007. He would not be eligible for the week ending July 7, 2007, because that is the week in which the proposed resignation would have been effective.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of July 26, 2007, reference 02, is modified in favor of the appellant. Herrardo Ruan is eligible for benefits for the one-week period ending June 30, 2007. He is disqualified effective July 1, 2007, and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$815.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css