

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON S FRANCK
Claimant

APPEAL NO. 10A-UI-12830-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEHE CONSTRUCTION CO
Employer

OC: 08/15/10
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 13, 2010, reference 01, that concluded the claimant was not disqualified for refusing a recall back to work. A telephone hearing was held on October 27, 2010. The claimant participated in the hearing. Butch Kehe participated in the hearing on behalf of the employer. The parties agreed that the issue of whether the claimant voluntarily quit employment with or without good cause attributable to the employer could be considered.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked for the employer as a laborer from May 2000 to August 19, 2010. The claimant was laid off from August 16 through 17. He returned to work on August 18 and 19, but informed the owner that he was quitting employment to accept self-employment working with his father-in-law on his farm.

The claimant filed for and received a total of \$1,950.00 in unemployment insurance benefits for the weeks between August 22 and October 2, 2010. He filed for partial unemployment insurance benefits for the week ending August 21, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code section 96.5-1. The rules provide that a claimant who quits employment to enter self-employment quits without good cause attributable to the employer. 871 IAC 24.25(19).

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated September 13, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs