

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDRE M LAFONTAINE
Claimant

APPEAL NO. 10A-UI-03662-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURESH BUILDING SYSTEMS INC
Employer

**Original Claim: 01/03/10
Claimant: Respondent (2-R)**

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Buresh Building Systems, Inc. (BBS) filed an appeal from a representative's decision dated February 18, 2010, reference 01, which held that no disqualification would be imposed regarding Andre Lafontaine's separation from employment. After due notice was issued, a hearing was held by telephone on April 20, 2010. Mr. Lafontaine participated personally. The employer participated by Molly Bird, Controller, and Stacy Barrick, Project Superintendent. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Lafontaine was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Lafontaine was employed by BBS from April 19 until July 21, 2009 as a full-time laborer. On July 20, he was involved in a verbal altercation with a coworker, Ryan Barrick. It escalated into a physical altercation that took place in front of customers. Mr. Lafontaine was notified later that evening that both he and Mr. Barrick were going to be written up as a result of the incident.

Mr. Lafontaine was scheduled to report to the employer's shop in Iowa Falls at 6:30 a.m. on July 21 to be transported to the job site but did not appear or call by the designated time. The employer received a message from him after 7:00 a.m. indicating that he was quitting. He had received a written warning dated July 7 after he failed to report his absence of that date. The warning advised that any further unreported absences or failures to appear would result in a second warning and possible termination.

Mr. Lafontaine filed a claim for job insurance benefits effective January 3, 2010. He has received a total of \$1,918.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that Mr. Lafontaine voluntarily quit his employment. Although he testified that he was told on July 20 that he was not to return to work, he was called that evening by the project superintendent and told that he and Mr. Barrick would only be written up for the altercation that occurred that day. The employer was credible in its testimony that Mr. Lafontaine left a message on July 21 saying that he quit. Based on the demeanor of the witnesses during the hearing, the administrative law judge found the employer more credible on the whole.

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). It appears to the administrative law judge that Mr. Lafontaine quit because he was unable to report to work on time on July 21. He knew from the prior warning that he faced possible discharge as a result. Anticipation of disciplinary action does not constitute good cause attributable to the employer for quitting. As such, benefits are denied.

Mr. Lafontaine has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated February 18, 2010, reference 01, is hereby reversed. Mr. Lafontaine quit his employment with BBS for no good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Lafontaine will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw