

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL COKER
Claimant

APPEAL NO. 07A-UI-11102-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUANTUM CONSTRUCTION INC
Employer

OC: 11/04/07 R: 04
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Quantum Construction, Inc. (employer) appealed an unemployment insurance decision dated November 29, 2007, reference 02, which held that Michael Coker (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 December 26, 2007. The claimant participated in the hearing. The employer participated through Supervisor Robert Thompson and co-employees Don Stewart and Melvin Hintze. 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 full-time siding applicator from April 2005 through November 5, 2007. He previously worked for the employer but was fired for poor attendance. At the end of the day on Thursday November 1, 2007, the claimant handed the employer his weekly timesheet because he said he might not be at work on Friday because he just hurt his shoulder at work. The claimant did not call or report to work on November 2, 2007. The employer called the claimant but could only leave a message, and he advised the claimant to call him. The employer wanted the claimant to seek medical treatment if he was really not working due to a work-related injury. The claimant thought the employer had an "attitude" on the message and chose not to return the call.

The claimant returned to work on November 5, 2007. The employer questioned him as to his absence on the previous Friday and whether he was gone for the reason he stated on Thursday. The claimant said it was true and the employer told him he needed to contact a doctor. The claimant became angry and argued with the employer because he did not feel he

needed to go to the doctor. The employer told him that if he was going to have an attitude, he could go home. The employer might have told the claimant to "get the hell outta here" if he was going to have an attitude. The employer had previously sent the claimant home for having an "attitude". The claimant gave the employer his keys to the vehicle and storage trailer and asked for his paycheck. He left after obtaining his paycheck and never called the employer or returned to work after that.

The claimant filed a claim for unemployment insurance benefits effective November 4, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

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 when he turned over his keys, asked for his paycheck, and left the work site without returning. He contends he was fired when the employer told him to leave but denies the employer qualified it by saying he could leave "if he had an attitude." The employer never told the claimant he was fired or anything similar to that. It should be noted that the employer had previously fired the claimant and there was no question he had been fired. It seems if the employer wanted to fire the claimant, he would have again been very clear in his words and actions. The preponderance of the evidence confirms the employer sent the claimant home because he had an attitude; which is also something that had been done before. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984).

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. The claimant has not satisfied that burden. Benefits are denied.

Iowa Code § 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 November 29, 2007, reference 02, 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 \$1,304.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw