

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID BOYER
Claimant

APPEAL NO: 09A-UI-06321-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONAL AGENCY SERVICE CORP
Employer

OC: 02-15-09
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 14, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on June 4, 2009. The claimant participated in the hearing. Darrell Johnson, President, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time financial advisor/insurance agent for Brown McNerney Johnson from January 1, 2006 to February 15, 2009. The parties had a contract at the time of the claimant's hire stating commission percentages and that the claimant was able to take a \$2,500.00 a month draw against commissions earned. Employees may draw up to \$2,500.00 for the first year of their employment and then they usually switch to straight commission but because of the claimant's lack of production President Darrell Johnson let him stay on the draw. When the commission is earned the amount the claimant had drawn was supposed to be deducted and he would be paid the remainder of the commission. The contract indicated the claimant may end up responsible for repayment of any excess draws when he left his position. The claimant was prepaid for commissions earned that he did not produce so Mr. Johnson suspended his draw January 1, 2009. Mr. Johnson had discussions and reviews with the claimant regarding how far behind he was in his draws versus commissions. He told the claimant he was going to have to discontinue the draw and the claimant promised he would do what was needed to get things done but stated he needed the consistent income of the draw so Mr. Johnson gave him more time. He was also warned during a lunch meeting August 21, 2008, about his lack of performance and that things needed to change. The claimant agreed he needed to perform better and work harder as he came and went as he pleased and often took long lunch breaks which detracted from his ability to earn commissions. His performance did

not improve during the next three months so in late November 2008 Mr. Johnson told him he was discontinuing his draw January 1, 2009, and per the contract he would be working on straight commission. The claimant's last check was February 9, 2009, for \$4,885.44. Mr. Johnson refused to continue fronting him his commissions after that because he was so far behind in repaying his draws for the previous two years but he was going to pay his health insurance and provide his office as before. The claimant submitted his resignation effective February 15, 2009, stating in his resignation letter he was going into business for himself.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The employer allowed the claimant to collect a draw for three years, two years longer than most employees, because the claimant's production was lacking and he would not have made as much as or more than the draw on commission. After three years the claimant was significantly behind on his draw versus commissions and the employer determined it could no longer continue that arrangement and take the loss each year. The claimant had been warned about his performance on at least two occasions and was told he would be removed from the draw system if he did not show improvement but despite those warnings the claimant failed to improve his performance. Under these circumstances the administrative law judge cannot conclude that the claimant has demonstrated that his leaving was attributable to the employer as defined by Iowa law. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 not eligible for those benefits. The matter of determining 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 April 14, 2009, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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