

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A LEAR
Claimant

APPEAL NO. 09A-UI-01547-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CON AGRA - COUNCIL BLUFFS
Employer

**OC: 12/28/08 R: 01
Claimant: Respondent (2)**

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 January 20, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 19, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Rebecca Stokes-Booth participated in the hearing on behalf of the employer. Exhibits One through Six were admitted into evidence at the hearing.

ISSUE:

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

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a forklift operator from August 9, 1994, to December 23, 2008. He was informed that he was going to be terminated on December 19, 2008, after he was alleged to have violated safety rules on December 16, 2008, by "tunneling," which refers to a practice where forklift operators take product from the lower part of a stack of product rather than from the top. He had received another warning about this on November 7, 2008. The claimant denied tunneling each time.

After a review of the termination, the employer agreed to nullify the termination and allow the claimant to return to work under a last-chance agreement signed by the parties on December 23, 2008. As part of the last-chance agreement, the claimant had to satisfactorily pass a drug and alcohol test. The claimant provided a urine sample for testing on December 23.

While the claimant was at the plant on December 23, 2008, a coworker who is not in a management position, asked him why he was there because the coworker thought they had gotten rid of him.

Because the claimant did not believe he was being treated fairly and coworkers had it out for him, he decide to quit his employment and did not report to work as scheduled on December 26 and the days afterward.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 28, 2008.

Although the employer on January 5, 2009, notified the claimant that he would be terminated in seven days due to his failing the drug test. The claimant did not request a retest of the split sample within seven days because he had already decided to quit his employment.

The claimant filed for and received a total of \$2,723.00 in unemployment insurance benefits for the weeks between December 28, 2008, and February 14, 2009.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

The claimant was not discharged because he had already decided to quit his employment as of December 26 when he decided not to return to work. The reasons for not going back to employment do not meet the standard of good cause attributable to the employer for leaving employment.

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. 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated January 20, 2009, 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 determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css