

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH M RIORDAN
Claimant

APPEAL NO: 19A-UI-09662-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COX CONCRETE CONSTRUCTION LLC
Employer

OC: 11/03/19
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 4, 2019, reference 04, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 6, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Adam Cox, Owner, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 laborer for Cox Concrete Construction from April 2019 to November 16, 2019. He voluntarily left his employment by refusing to continue working for the employer.

The claimant's last day of work for the employer was November 14, 2019. The employer had a job pouring concrete in Spencer to begin Monday, November 18, 2019. On November 16, 2019, the claimant asked the employer for his weekly paycheck by text message and the employer told him he could cash it Monday, November 18, 2019, before they started pouring the floor in Spencer. The claimant responded, "K well I guess I'll see u next year then if u want me to come back" (Employer's Exhibit One). The employer said, "Did you just quit?" (Employer's Exhibit One). The claimant replied, "Just said I'm done til next year" (Employer's Exhibit One) The employer responded, "That's not an option. You either work or you don't" (Employer's Exhibit One). The claimant said, "Take it how u want" and the employer told him he would touch base with him the following day to pay him for his hours worked to date (Employer's Exhibit One). After the employer dropped the claimant's check off at the claimant's home November 17, 2019, the claimant texted him, "Way to tell unemployment that I quit when those words never came out of my mouth!!" (Employer's Exhibit One). The employer stated, "When you have a job and then you refuse to go to work, that is called quitting"

(Employer's Exhibit One). The claimant said, "I never once said I quit!! I said take it how u want" (Employer's Exhibit One). The employer responded, "If you didn't quit then where have you been? The business is still working full time. To be an employee, it is mandatory to work when work is available. You had 2 options and you chose option 2. Its out of my hands" (Employer's Exhibit One). The claimant replied, "And what happens to ur business is outta mine now to" (Employer's Exhibit One). The claimant did not return to work and the employer determined he voluntarily quit his job.

The claimant has claimed and received unemployment insurance benefits in the amount of \$2,624.00 for the eight weeks ending January 4, 2020.

The employer participated personally in the fact-finding interview through the statements of Owner Adam Cox.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

While the claimant may not have said the words, "I quit," the employer could reasonably infer from the claimant's actions that he was quitting his job. Semantics will not be the determining factor in this case.

The fact that the claimant said he would see the employer the following year if the employer wanted him to return when the employer still had full-time work available for the claimant at the time demonstrates the claimant was quitting his job. The employer asked him directly if he "just quit" and the claimant did nothing to disabuse him of that notion and instead said he was done until next year. When the employer reasonably stated the claimant would either work or not but being done until next year when the employer still had work available was not an option the claimant said, "Take it how you want."

The claimant clearly quit his job when there was work available for him and he has not demonstrated that his leaving was for good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer’s account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer’s account will not be charged for benefits paid. Consequently, the claimant’s overpayment of benefits cannot be waived and he is overpaid benefits in the amount of \$2,624.00.

DECISION:

The December 4, 2019, reference 04, 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. The claimant has received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$2,624.00 for the eight weeks ending January 4, 2020.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn