

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN J GARCIA

Claimant

APPEAL NO. 07A-UI-04435-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES COLD STORAGE CO INC

Employer

**OC: 10-22-06 R: 02
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 25, 2007, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on May 17, 2007. The claimant did participate. The employer did participate through Sandy Trimnell, Controller. Employer's Exhibit One was received.

ISSUES:

Did the claimant voluntarily quit with good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a warehouseman full time beginning January 2, 2006 through April 5, 2007 when he voluntarily quit.

On March 29, 2007 the claimant told the dock foreman that he was going to be leaving his job soon to go to Texas. On Thursday April 5, 2007 the claimant left the employer a message at 9:37 p.m. indicating that he was leaving to go to Texas. The message did not say that the claimant would be back or that he was asking for a leave of absence. He apologized on the message for leaving the employer short-handed without notice. The employer understandably believed that the claimant had quit and another person was hired to replace him the following weekend. The claimant was to work on Friday April 6. The claimant then showed up the following Monday April 9 in non work clothes asking for work. The employer told him that based on the message he'd left on the answering machine on April 5 in conjunction with what he had told the dock foreman on March 29 they believed he had quit.

Claimant has received unemployment benefits since filing a claim with an effective date of October 22, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left his 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.

871 IAC 24.25(25) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (25) The claimant left to take a vacation.

The claimant left a message for his employer indicating he was leaving to go to Texas. The claimant left no indication when or if he would be back. The employer was not obligated to hold the claimant's position for him while he went on vacation. The claimant did not have permission to be gone. The claimant's conversation with the dock foreman in conjunction with the message clearly led the employer as a reasonable person would, to believe he was quitting. His failure to show up for work the next day is clear evidence of his intention not to work. The employer hired someone to replace the claimant. The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The claimant has failed to establish good cause for leaving was attributable to the employer. He voluntarily quit on April 5 when he left the phone message for the employer. 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 claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 25, 2007, reference 03, decision is reversed. 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. Claimant is overpaid benefits in the amount of \$2,233.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs