

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS B WEAVER
Claimant

APPEAL NO. 08A-UI-10701-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEACON OF HOPE HOSPICE INC
Employer

OC: 09/21/08 R: 04
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Beacon of Hope Hospice, Inc., filed a timely appeal from an unemployment insurance decision dated November 3, 2008, reference 01, that allowed benefits to Douglas B. Weaver. After due notice was issued, a telephone hearing was held on December 5, 2008, with Mr. Weaver participating. Joel Parsons participated for the employer. Documents submitted by the employer to the Appeals Section on December 4, 2008, were not included in the record, because they had not been provided to the claimant as indicated in the cover letter.

ISSUES:

Did the claimant quit or was he discharged?

Was the separation a disqualifying event?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Douglas B. Weaver's employment with Beacon of Hope, Inc., lasted for a little more than three years before ending on September 12, 2008. He last worked as volunteer coordinator, a full-time position. On August 28, 2008, Joel Parsons asked Mr. Weaver for documentation of his efforts on behalf of the employer over the previous year. This information was to be used for Mr. Weaver's evaluation.

The request made Mr. Weaver concerned that his job was in jeopardy. Client census had declined over the previous year, and the company had taken a number of steps to cut costs. Staff members, including Mr. Parsons, had speculated, only partially in jest, as to whether their jobs were on the line.

Mr. Weaver was to provide the documentation of his work on September 2, 2008. When he arrived, he presented a letter of resignation to Mr. Parsons and to the general manager. After some discussion, the general manager asked Mr. Weaver to consider the matter overnight. On September 3, 2008, he was unable to meet with the general manager because she was busy. He spoke to her, then, on September 4. The general manager told Mr. Weaver that the matter

was then out of her hands and would be determined by the board of directors. The board of directors accepted Mr. Weaver's resignation, which, according to his letter, was to be effective September 12, 2008.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the separation was a quit or a discharge. For the reasons that follow, the administrative law judge concludes that it must be deemed a quit.

If an individual submits a letter of resignation, an employer is not required to allow the individual to rescind it. See 871 IAC 24.25(38). The evidence establishes that Mr. Parsons submitted his letter of resignation and that it was accepted by the board of directors, who in essence overruled the general manager's offer to let Mr. Weaver reconsider.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. The evidence in the record indicates that Mr. Weaver was concerned about the possibility of a layoff but had not been notified of one and that he was concerned that his job performance did not meet the employer's satisfaction, even though the employer had not requested a resignation or imposed any discipline. According to 871 IAC 24.25(29) and (33), a resignation under either of these circumstances must be treated as a quit without good cause attributable to the employer. Benefits must be withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. 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.

- b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Mr. Weaver must repay the benefits he has received to this point is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated November 3, 2008, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw