

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

OSCAR AVILES

Claimant

APPEAL NO. 14A-UI-03469-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND MILLWRIGHTS INC

Employer

OC: 03/02/14

Claimant: Respondent (2)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Heartland Millwrights, Inc. (employer) appealed an unemployment insurance decision dated March 28, 2014, (reference 01), which held that Oscar Aviles (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2014. The claimant participated in the hearing. Ike Rocha interpreted on behalf of the claimant. The employer participated through President Lewis Eaton and Foreman Edgar Carrion. Employer's Exhibits One and Two were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time millwright working for the employer in different states from May 21, 2012, through February 13, 2014, when he voluntarily quit. His last actual work day was on January 17, 2014, when he completed safety training and he was out on vacation after that until the date of his separation. The claimant voluntarily quit because his wife wanted him off the road, his debts were paid off and he wanted to spend time with his family. He had recently worked three rotations of seven days on and seven days off but he regularly worked ten days on and four days off work. The claimant's employment offer letter, which he signed at the time of hire, confirmed that he would work the 10/4 work cycle absent special circumstances or unless the owner wanted something different. Continuing work was available at the same contract of hire.

The claimant filed a claim for unemployment insurance benefits effective March 2, 2014, and has received benefits after the separation from employment in the amount of \$2,400.00. President Larry Eaton did not participate in the fact-finding interview. Although he returned a

call to the fact-finder, the employer was again not available when the fact-finder attempted to reach him a second time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit on February 13, 2014, for personal reasons. There was no change in his contract of hire and continuing work was available at the same hours, wages and conditions as when he began his employment.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The voluntary quit was without good cause attributable to the employer and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, the benefits were not received due to fraud or willful misrepresentation and the employer witness did not participate in the fact-finding interview. Consequently, the overpayment is waived and the employer's account continues to be subject to charge for benefits already paid.

DECISION:

The unemployment insurance decision dated March 28, 2014, (reference 01), is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The overpayment of \$2,400.00 is waived and the employer's account is not relieved of the charges.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs