

the end of shift without permission and without clocking out. Mr. Leab did not return to the employment after June 15, 2005. Mr. Leab subsequently contacted the employer to inquire about his final check. Mr. Leab did not inquire about further employment, did not retrieve his tools or his final paycheck from the workplace, and did not return to work.

Mr. Leab has received benefits of \$1,944.00 since establishing his claim.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Leab's voluntary quit was for good cause attributable to the employer. It does not.

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 proving that a voluntary quit was for good cause attributable to the employer. See Iowa Code section 96.6(2). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992).

Since Mr. Leab did not participate in the hearing, the evidence in the record is limited to the testimony of the employer representative. The facts in evidence indicate that Mr. Leab manifested intent to sever the employment and committed an overt act to carry out the intention. The facts in evidence do not indicate that the voluntary quit was for good cause attributable to the employer. Accordingly, Mr. Leab is disqualified for benefits until 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 employer's account shall not be assessed for benefits paid to Mr. Leab.

Iowa Code section 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.

Since Mr. Leab's quit was without good cause attributable to the employer, Mr. Leab will have to repay the benefits he has received since establishing his claim.

DECISION:

The representative's decision dated August 29, 2005, reference 01, is reversed. The claimant is disqualified from receiving benefits until 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 employer's account shall not be charged for benefits paid to the claimant. The claimant is overpaid \$1,944.00.

jt/tjc