

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH A DUNN
Claimant

APPEAL NO. 07A-UI-09922-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINEGARD COMPANY
Employer

**OC: 09/16/07 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Winegard Company (claimant) appealed a representative's October 18, 2007 decision (reference 01) that concluded Keith A. Dunn (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on November 13, 2007; the hearing was recessed and was reconvened and completed on November 26, 2007. The claimant participated in the entire portion of the hearing held on November 13; he participated briefly in part of the portion of the hearing held on November 26 before he was expelled by the administrative law judge for disorderly conduct pursuant to 871 IAC 26.14(12). Jeff Scher of TALX Employer Services appeared on the employer's behalf on both dates and presented testimony from witness Carl Ingwersen on November 13 and from witness Thone Sysouchanh on November 26. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 14, 2006. He worked full time as an assembler in the employer's satellite system manufacturing facility on the second shift, usually from 2:30 p.m. to 10:30 p.m., Monday through Friday. His last day of work was a modified shift that had begun at 4:30 p.m. on September 11 and ended at 2:30 a.m. on September 12, 2007. He did not report for work or recontact the employer for his afternoon shift on September 12 or thereafter.

The claimant had some prior absences from work for which he had received warnings including June 27, July 10, and August 7, 2007. He had been absent for the entire workweek of September 4 through September 7 as a no-call/no-show, and the employer had believed the

claimant had abandoned his position as of that date. However, the claimant did report for work again on September 10. The factory manager, Mr. Ingwersen, spoke to him that night about his being absent and being a no-call/no-show. The claimant told Mr. Ingwersen that he had been absent the prior week for medical reasons and that he could provide documentation. As a result, Mr. Ingwersen allowed the claimant to return to work. The claimant worked that evening until 8:30 p.m., which was when work was finished for the shift due to a fire in the plant earlier in the day. As noted above, the claimant then worked one other shift, the evening of September 11. He did not provide any medical documentation to the employer for the absence for the week of September 4 through September 7. The employer never indicated to the claimant that he was discharged; had the claimant continued to report for work on and after September 12, his job was still available to him.

The claimant established a claim for unemployment insurance benefits effective September 16, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,112.00.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct.

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 asserts that his separation was not “voluntary” as he had not desired to end the employment; he argues that it was the employer’s action or inaction which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code section 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being a voluntary quit of the employment, such as failing to return to work due to a belief his job might be in jeopardy even though the employer had not told him he was discharged. 871 IAC 24.25.

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant failed to return to work even though the employer had not told him he was being discharged. Notably, the claimant failed to provide medical documents as promised that he asserted would validate his claim that he had been hospitalized on or after September 12, and the claimant’s immediate supervisor refuted the claimant’s prior testimony that he had spoken with the supervisor about being ill. Therefore, the separation is considered to be a voluntary quit. The claimant then has the

burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. While the employer did not discharge the claimant, it had given him a warning or reprimand due to his absence from work. Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not satisfied his burden. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's October 18, 2007 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of September 12, 2007, benefits are withheld until such time as the claimant 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 is overpaid benefits in the amount of \$2,112.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css