

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON W SCHARFENKAMP
Claimant

APPEAL NO. 10A-UI-02534-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARROLL COOLERS INC
Employer

**Original Claim: 07/05/09
Claimant: Respondent (2/R)**

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

STATEMENT OF THE CASE:

Carroll Coolers, Inc. (employer) appealed a representative's February 9, 2010 decision (reference 01) that concluded Jon W. Scharfenkamp (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2010. The claimant participated in the hearing. Pam Beardmore appeared on the employer's behalf. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on December 28, 2009. He worked as a full-time production worker in the framing department of the employer's walk-in cooler and freezer manufacturing business. His normal work schedule was to work a four/ten, 40-hour schedule from 3:30 p.m. to 2:00 a.m., with his first shift of the week beginning Monday afternoon and his last shift of the week beginning on Thursday afternoon and ending at 2:00 a.m. Friday. His last shift worked was the shift that began at 3:30 p.m. on January 13 and ended at 2:00 a.m. on January 14.

In advance of his shift scheduled to begin at 3:30 p.m. on January 14, the claimant called in to the employer at about 11:30 a.m. and spoke to Ms. Beardmore, the employer's human resources administrator. He told her he was quitting, and indicated that the reason why was the night shift supervisor. He indicated the supervisor would watch and stare at him while he was working, which made him nervous, causing him to make mistakes. The supervisor also made some comments to the claimant's trainer about the claimant being slow.

During the last shift the claimant worked, another probationary employee was discharged; the claimant thought that employee was better at the work than he was, and so became discouraged as to how he was going to successfully complete the probationary period. Also during that last shift, the night supervisor had indicated to the claimant's trainer that the following week he planned to move the claimant to the table the dismissed employee had been working, where he would be working somewhat more independently than he had in the eight days he had worked thus far. The claimant was concerned that he was being pushed to work independently too soon, that he did not feel adequately prepared to work with less support.

Further, when the claimant was hired, he had expressed a preference for working with metal; he had been told that the only work available for him at that time was in the wood framing department but that, as time went on, it was possible that things could be switched around. On the last shift the claimant worked, he learned that another employee who had been hired at about the same time as he was, who was a rehire, had been switched that night to working in the metal department; the claimant felt he had been overlooked. Finally, the claimant had been having difficulty in getting enough sleep after getting off work, prior to needing to report for his next shift. However, he had not sought medical attention for this issue.

The claimant established a claim for unemployment insurance benefits effective July 5, 2009. After the separation, he reopened his claim by filing an additional claim effective January 17, 2010. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). Quitting because of a concern that his job performance was not or would not be adequate, where the employer has not indicated an intention to discharge the claimant due to the job performance, is not good cause. 871 IAC 24.25(33). Quitting because of a difficulty in adjusting to the work schedule, where the shift was known and accepted upon hire, is not good cause. 871 IAC 24.25(18). Likewise, quitting because of a preference to do other work where he had accepted the work offered to him is not good cause. 871 IAC 24.25(27). While the claimant's work situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable.

O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. A person who quits employment without good cause attributable to the employer must be disqualified from further benefits even if that person has given up unemployment insurance benefits to accept the work which was then considered unsuitable. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's February 9, 2010 decision (reference 01) is reversed. The claimant voluntarily left his full-time employment without good cause attributable to the employer. As of January 14, 2010, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw