

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY W PALMER
Claimant

APPEAL NO. 13A-UI-12738-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

**OC: 10/20/13
Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits, Employer Chargeability for Non
Participation at Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 8, 2013, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 6, 2013. Claimant participated. Employer participated by Lee Trask, Vice President; Clark Vold, Director of Manufacturing; and Carolyn Cross, Personnel Manager.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer, whether claimant is overpaid unemployment insurance benefits and whether employer's account is charged due to non participation at fact finding.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 26, 2013. Claimant quit work on September 27 because he thought he was going to face discharge due to not having a doctor's note. No one told claimant he was facing discharge. To the contrary, continued work was available.

Employer did participate at the fact finding interview. The extent of employer's participation is in question. It is not determined whether employer presented sufficient evidence to prove that they would have prevailed if the evidence is un-refuted.

There is no evidence that proves claimant received benefits due to fraud or willful misrepresentation.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because he assumed he was facing discharge for absenteeism. There is no hard evidence to prove that claimant was in fact going to face discharge. To the contrary, all evidence shows that continued work was available if claimant had not quit. Benefits withheld.

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.

871 IAC 24.25(28) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

The next issue concerns an overpayment of unemployment insurance benefits and charges to employer's account.

Fraud or willful misrepresentation by the claimant means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment benefits. See 871 IAC 24.10(4).

Employer participation would include testimony from a firsthand witness or the name and number of a firsthand witness who may be contacted for rebuttal. It could also include a detailed written statement or documents that provide specific, factual information regarding the separation. At a minimum, the employer's information regarding a discharge must include the dates, particular circumstances and the act or omissions of the claimant. A voluntary separation should include the stated reason for the quit. See 871 IAC 24.10(1)

Statements or general conclusions without supporting detailed factual information and/or information submitted after the fact-finding interview are not considered participation within the meaning of the statute. See 871 IAC 24.10(1)

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met:

(1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

This matter is remanded to the Claims Section for determination of claimant's overpayment and or waiver.

It is unclear whether employer met the participation rule by presenting sufficient evidence at fact finding to prevail if the evidence were un-refuted. This matter is remanded to determine if charges are made and the amount of charges made to employer's account for failure to participate at fact finding.

DECISION:

The decision of the representative dated November 8, 2013, reference 01, is reversed and remanded for determination of claimant's overpayment and or waiver, and employer's potential account charges for fact-finding participation. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css