

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON C HORN
Claimant

APPEAL NO. 14A-UI-06041-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINEGARD COMPANY
Employer

OC: 05/18/14
Claimant: Respondent (2)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 5, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an agency conclusion that the claimant had voluntarily quit for good cause attributable to the employer. After due notice was issued, a hearing was held on July 7, 2014. Claimant Brandon Horn did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Kerry Hale, Human Resources Manager, represented the employer. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibit One into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview.

ISSUES:

Whether Mr. Horn's voluntary quit was for good cause attributable to the employer.

Whether Mr. Horn has been overpaid unemployment insurance benefits.

Whether Mr. Horn must repay benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brandon Horn was employed by Winegard Company as a full-time graphic designer from 2010 until May 19, 2014, when he voluntarily quit in response to a reprimand from Tiffany Brockway, Marketing Manager. Earlier in the day on May 19, Ms. Brockway had counseled Mr. Horn for appearing to be asleep in his cubicle. As Ms. Brockway was counseling Mr. Horn, Mr. Horn became upset and said he could no longer work for the employer because he was not "part of the clique." Ms. Brockway and Mr. Horn then went to the employer's human resources department. Ms. Brockway notified human resources staff that Mr. Horn wished to resign. The

human resources staff invited Mr. Horn to share his concerns about the employment. Mr. Horn declined to do so and immediately separated from the employment.

Mr. Horn established a claim for benefits that was effective May 18, 2014 and received \$307.00 in benefits for the week ending May 24, 2014.

The lower decision that allowed benefits to the claimant was preceded by a fact-finding interview on June 4, 2014. The employer did not participate in the fact-finding interview because the employer did not receive notice of the fact-finding interview. At the time set for the fact-finding interview, the Workforce Development claims deputy telephoned Kerry Hale, Human Resources Manager, and left a message for her. Ms. Hale subsequently called back, but not in time to provide a statement before the lower decision was issued.

REASONING AND CONCLUSIONS OF LAW:

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.

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 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Mr. Horn did not participate in the appeal hearing and did not present any evidence to support the conclusion that he is voluntary quit was for good cause attributable to the employer. The weight of the evidence indicates that Mr. Horn voluntarily quit in response to a reprimand. Quits under such circumstances are presumed to be without good cause attributable to the employer. See Iowa Admin. Code r. 871 – 24.25(28). The weight of the evidence establishes a voluntary quit without good cause attributable to the employer. Accordingly, Mr. Horn 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.

Iowa Administrative Code rule 817 IAC24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation.

At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$307.00 for the benefit week ending May 24, 2014. In this instance, the only reason the employer did not participate in the fact-finding interview was because the employer did not have notice of the fact-finding interview. Iowa Administrative Code rule 817 IAC24.10(1) presumes that the employer had notice of the fact-finding interview. In this case, the employer did not have such notice. The employer should not be penalized, nor the claimant granted a windfall, based on the agency's failure to provide notice to the employer of the fact-finding interview. Because the employer did not have notice of the fact-finding interview, and because that was the sole reason the employer did not participate in the fact-finding interview, employer cannot be deemed to have failed to participate in the fact-finding interview. The claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The claims deputy's June 5, 2014, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant 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 charged. The claimant was overpaid \$307.00 for the week ending May 24, 2014. The claimant must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css