

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS J GARRISON

Claimant

APPEAL NO. 17A-UI-05902-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILTON PRECISION STEEL

Employer

OC: 05/14/17

Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 5, 2017, reference 02, 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 the claims deputy's conclusion that the claimant was discharged on May 1, 2017 for no disqualifying reason. After due notice was issued, a hearing was held on June 23, 2017. Claimant Douglas Garrison registered a telephone number for the hearing, but did not answer the administrative law judge calls to that number at the time of the hearing and did not participate. Gonzalez Greg represented the employer and presented additional testimony through Chad Stieger. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant and received Exhibit A into evidence. The administrative law judge also took official notice of the fact-finding materials for the limited purpose of documenting the employer's participation in the fact-finding interview.

ISSUES:

Whether Mr. Garrison separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Douglas Garrison was employed by Wilton Precision Steel as a full-time general laborer from April 2016 until May 1, 2017, when he voluntarily quit the employment in response to a partial-day suspension. Mr. Garrison's work hours were 3:30 p.m. to 2:00 a.m., Monday through Friday and 3:30 p.m. to 8:00 p.m. on Saturday. Mark Brush, Floor Supervisor, was Mr. Garrison's immediate supervisor. On May 1, 2017, Mr. Brush sent Mr. Garrison home early in response to

Mr. Garrison's refusal to perform non-preferred work within the scope of his duties. Mr. Brush immediately notified Gonzalez Greg, Human Resources Supervisor, that he had sent Mr. Garrison home for the day. Approximately five to 10 minutes later, Mr. Garrison entered Mr. Greg's office. Mr. Garrison stated that he had cleaned out his locker and that he was "out of here." Mr. Garrison was carrying a couple bags of clothes. Mr. Greg did not respond to Mr. Garrison's utterance. Mr. Garrison then left the workplace. At the time Mr. Garrison left on May 1, Mr. Greg's intention was to issue a reprimand when Mr. Garrison returned to work the following day and continue the employment. However, Mr. Garrison did not return. Neither Mr. Greg nor Mr. Brush had discharged Mr. Garrison from the employment. It was common knowledge in the workplace that only the business owner, Dennis Hanser, and the Plant Manager, Chad Stieger, had the authority to discharge employees from their employment.

Mr. Garrison established a claim for unemployment insurance benefits that was effective May 14, 2017 and received \$2,155.00 in benefits for the five-week period of May 14, 2017 through June 17, 2017. Wilton Precision Steel is a base period employer for purposes of the claim. On June 2, 2017, a Workforce Development claims deputy held a fact-finding interview to address Mr. Garrison's separation from the employment. Mr. Greg represented the employer at the fact-finding interview, but got separated from the fact-finding interview before he had an opportunity to hear or respond to Mr. Garrison's assertions during the rebuttal portion of the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(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 evidence in the record establishes that Mr. Garrison voluntarily quit on May 1, 2017 in response to a verbal reprimand and partial-day suspension. The voluntary quit was without good cause attributable to the employer. Accordingly, Mr. Garrison is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Garrison must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible 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 § 96.3(7)(a) and (b).

Mr. Garrison received \$2,155.00 in benefits for the five-week period of May 14, 2017 through June 17, 2017. Mr. Garrison has been disqualified for benefits as a result of this decision. Accordingly, the benefits that Mr. Garrison received constitutes an overpayment of benefits. Because the employer participated in the fact-finding interview, Mr. Garrison is required to repay the overpaid benefits. The employer's account is relieved of liability for benefits, including liability for benefits already paid in connection with the claim.

DECISION:

The June 5, 2017, reference 02, decision is reversed. The claimant voluntarily quit the employment on May 1, 2017 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. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,155.00 in benefits for the five-week period of May 14, 2017 through June 17, 2017. The claimant must repay the benefits. The employer's account is relieved of liability for benefits, including liability for benefits already paid in connection with the claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs