

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES KEMEH
Claimant

APPEAL NO: 12A-UI-11915-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND
Employer

OC: 09/02/12
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Farmland Foods, Inc. (employer) appealed an unemployment insurance decision dated September 25, 2012, reference 01, which held that James Kemeh (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2012. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Becky Jacobsen, Human Resources Manager.

After the record closed, the administrative law judge learned the claimant had called in at 2:42 p.m. to provide his telephone number for the 3:00 p.m. hearing. An email was sent instead of an instant message and the email was not seen until 4:11 p.m. The administrative law judge reopened the record at 4:23 p.m. with both the claimant and Ms. Jacobsen participating. The claimant was questioned as to whether he needed an interpreter and he confirmed that he did not. The evidence previously provided by Ms. Jacobsen was summarized by the administrative law judge and the hearing went forward after that. 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:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from July 13, 2011 through August 17, 2012 when he walked off the job before the end of his shift. He started work each day around 3:00 p.m. and always had to work approximately a half hour after the end of the department shift in order to carry out his job duties. At the end of the shift, the claimant tore down and used a mule to move the pork product into coolers so the work areas could be

cleaned. The shift ended at 12:30 a.m. on August 17, 2012 and the claimant clocked out and left at 12:28 a.m. However, he did not tell anyone he left so his co-employees looked for him and his supervisor paged him without success. It was only discovered that he left after someone saw he had punched out on the time clock.

The claimant returned to work on Monday, August 20, 2012 and was told he was considered to have quit. He told the employer that he was not aware that he needed to stay on August 17, 2012 but this was simply inaccurate since he had stayed late every other night that week. The department shift ended at 12:30 a.m. on Monday, August 13, 2012 and the claimant clocked out at 12:55 a.m. The shift ended at 11:48 p.m. on Tuesday and he clocked out at 12:14 a.m. On Wednesday, he left at 1:03 a.m. after the shift was over at 12:30 a.m. and on Thursday, the shift ended at 11:18 p.m. and the claimant clocked out at 11:57 p.m.

The claimant contends that his supervisor took his mule away from him on August 17, 2012 and tore up his mule paperwork. The employer contends the claimant's mule paperwork was torn up on August 16, 2012 because he had the incorrect paperwork. The employer contends the claimant's mule was taken from him on August 16, 2012 because he received and signed a written warning for taking an excessive break. The claimant admitted he received the written warning on August 16, 2012.

The claimant filed a claim for unemployment insurance benefits effective September 2, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

While the claimant may not have said the words he quit, his actions did that for him. A voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by walking off the job before the end of his shift on August 17, 2012. He has failed to satisfy his burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2.

In the alternative, the separation could also be characterized as a discharge, in which case, the employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). Walking off the job without notice to or permission from a supervisor, is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. Work-connected misconduct as defined by the unemployment insurance law has also been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a

particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated September 25, 2012, reference 01, is reversed. The claimant's separation is disqualifying. Benefits are withheld until he has worked in and has 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css