

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS L MARTIN
Claimant

APPEAL NO. 07A-UI-07435-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BC'S TRUCK PLAZA INC
AMPRIDE TRUCK PLAZA**
Employer

**OC: 07/08/07 R: 01
Claimant: Respondent (2)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

BC's Truck Plaza Inc., doing business as Ampride Truck Plaza, filed a timely appeal from the July 30, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 20, 2007. Claimant Thomas Martin participated. Cindy Borkowski, Office Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits paid to the claimant and received Exhibit A into evidence.

ISSUES:

Whether the claimant was discharged by the employer or voluntarily quit. The administrative law judge concludes that the claimant voluntarily quit.

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

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Martin was employed by BC's Truck Plaza/Ampride Truck Plaza as a full-time kitchen shift leader/cook from April 5, 2003 until July 9, 2007, the last day he appeared and worked a shift. Mr. Martin's regular hours of employment were 2:00 p.m. to 10:00 p.m. or midnight. Mr. Martin's immediate supervisor was General Manager Dennis Holdsworth. On July 4, Mr. Martin was the passenger in a vehicle that was involved in an accident. Mr. Martin experienced temporary shoulder and neck pain. On July 5, July 7, Mr. Martin properly reported absences. On the morning of July 8, Mr. Martin initially told his coworkers that he would be into work and then called back to report that he would again be absent. On July 9, Mr. Martin contacted Mr. Holdsworth to inquire whether he still had a job. Mr. Holdsworth told Mr. Martin that the decision was Mr. Martin's to make. Mr. Holdsworth asked Mr. Martin to come speak with him at his office. Mr. Martin never appeared for the meeting and never returned to the employment.

Office Manager Cindy Borkowski was present for Mr. Holdsworth's end of the telephone conversation with Mr. Martin.

On July 17, Mr. Martin contacted Ms. Borkowski to request payment of accrued vacation benefits based on a separation from the employment. Ms. Borkowski told Mr. Martin that she was unaware that he had separated from the employment. At that time, Mr. Borkowski asserted that he had been discharged by a part-time shift leader on July 9, prior to the telephone call with Mr. Holdsworth. The part-time shift leader had no authority to discharge Mr. Martin from the employment and Mr. Martin knew this.

Mr. Martin established a claim for benefits that was effective July 8, 2007 and has received benefits totaling \$688.00.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Mr. Martin voluntarily quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The greater weight of the evidence indicates that Mr. Martin voluntarily quit the employment. The weight of the evidence indicates that Mr. Martin contacted Mr. Holdsworth on July 9 for the express purpose of discussing whether the employer continued to have work available for him and learned at that time that the employer did in fact have work available for him. The greater weight of the evidence indicates that Mr. Martin elected not to return to the employment for personal reasons, but not for good cause attributable to the employer. The weight of the evidence fails to establish that Mr. Holdsworth engaged in the vulgar tirade Mr. Martin attributed to him at the hearing.

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.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Martin voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Martin 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 for benefits paid to Mr. Martin.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because Mr. Martin received benefits for which he has been deemed ineligible, those benefits constitute an overpayment that Mr. Martin must repay to Iowa Workforce Development. Mr. Martin is overpaid \$688.00.

DECISION:

The Agency representatives July 30, 2007, 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 is overpaid \$688.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs