

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM C CAMPBELL
Claimant

APPEAL NO. 10A-UI-10515-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORYDON OIL CO
Employer

OC: 06/06/10
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Corydon Oil, filed an appeal from a decision dated July 20, 2010, reference 01. The decision allowed benefits to the claimant, William Campbell. After due notice was issued, a hearing was held by telephone conference call on September 10, 2010. The claimant participated on his own behalf. The employer participated by Owner Russell Danielsen and was represented by Alan Wilson.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

William Campbell was employed by Corydon Oil from June 30, 2009 until May 18, 2010 as a part-time painter. In May 2010, the employer's insurance company did a background check on all employees and discovered Mr. Campbell had a drunk driving charge in the past three years. The insurer informed the employer the claimant was no longer allowed to drive any of the company vehicles.

Owner Russell Danielsen had to lay the claimant off on May 18, 2010, because he was not allowed to drive to the locations where the tanks were located. He made arrangements for the tanks to be brought into a central location for painting and attempted to call Mr. Campbell beginning May 28, 2010, to notify him to return to work. By that time the claimant had decided to seek work elsewhere but never informed the employer of his decision and never returned to the calls. He began work at a new job on July 5, 2010.

William Campbell has received unemployment benefits since filing a claim with an effective date of June 6, 2010.

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.

871 IAC 24.25(3) 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:

(3) The claimant left to seek other employment but did not secure employment.

The claimant quit without notice to the employer because he felt he would be better off working elsewhere. He had not been offered another job at the time he filed his claim for benefits and by that time he could have returned to work at Corydon Oil. His decision to seek other employment does not constitute good cause attributable to the employer under the provisions of the above Administrative Code section. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 20, 2010, reference 01, is reversed. William Campbell is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css