

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN SETTLES

Claimant

APPEAL NO: 10A-UI-09882-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE FOODS GROUP LLC

Employer

OC: 05/30/10

Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Pinnacle Food Groups, LLC (employer) appealed an unemployment insurance decision dated July 1, 2010, reference 01, which held that Alan Settles (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 6, 2010. The claimant participated in the hearing with Attorney Danny Cornell. The employer participated through Wilda Lampe, Human Resources Specialist. Employer's Exhibits One through Seven and Claimant's Exhibit A were admitted into evidence. 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 technician from March 23, 2009 through May 29, 2009. A written offer of work was made on March 4, 2009 and the offer was for a minimum of three days including Tuesday, Thursday and Friday. The claimant was hired for a canning line and the first 90 days would constitute a probationary period. He would receive benefits after that and since the employer is a union facility, the claimant was advised his schedule may change after his probationary period.

Production was down and the employer had to place the senior employees in the jobs for which the claimant and several others were hired. During a company meeting on May 22, 2009 the claimant and other employees were taken off the regular schedule and placed in an on-call status. The newer employees were advised they would be placed on the A call list for returning to work, which meant they had the highest priority. If the employee fails to respond to the employer's calls four times, he is then placed on the B call list. If the employee fails to respond

to the employer's calls four more times, he is then placed on the C call list which indicates to the employer the employee is not interested in working.

The production lines caught up and the employer called the claimant on May 26, 2009 to work on the smokehouse. A message was left but the claimant did not return the call that morning and did not work. He did return the call to the employer in the early afternoon. The claimant said he had been in the fields planting and he bought a "trac" phone but did not have it set up correctly. He returned to work from May 27, 2009 through May 29, 2009. The employer told the claimant his failure to return the call earlier would count as a mark against him, but it was not counted against him. Eight messages were left for the claimant beginning June 1, 2009 and going through September 23, 2009 but he never returned the calls and never returned to work. He was placed on the B call list after he failed to return calls to the employer on June 1, 4, 9, and 18. The employer attempted to reach the claimant on September 15, 21, 22, and 23 and again there was no response. The employer considered the claimant was not interested in working after the final call on September 23, 2009.

The claimant considers that he was effectively fired since he was told on May 22, 2009 not to return to work unless they contacted him and he contends the employer never contacted him.

The claimant filed a claim for unemployment insurance benefits effective May 30, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

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

The claimant contends he did not quit his employment and his attorney suggested that he voluntarily quit for a change in the contract of hire. In general, 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 preponderance of the evidence in this case confirms the claimant quit his employment when he failed to return the employer's telephone calls and failed to return to work after May 29, 2009. The intent to quit can be ascertained by the claimant's objective actions.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden 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 July 1, 2010, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. 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/pjs