

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS GEORGE
Claimant

APPEAL NO: 06A-UI-10955-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WARREN COUNTY
Employer

OC: 10/01/06 R: 02
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Warren County (employer) appealed an unemployment insurance decision dated November 1, 2006, reference 01, which held that Douglas George (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 November 30, 2006. The claimant participated in the hearing. The employer participated through Steve Akes, County Engineer. Employer's Exhibit One was 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 hired as a full-time laborer on January 17, 1995 and moved into the position of Moto grader operator in December 1997. He sustained a previous non-work-related back injury in 2001 and sustained a work-related back injury in January 2005. He did not work at all in 2006 and reached maximum medical improvement in March 2006. He was paid workers' compensation benefits through June 2006. No medical documentation was provided by the claimant but he testified that his permanent restrictions are: floor to waist lifting no greater than 50 pounds; overhead lifting no greater than 35 pounds; horizontal lifting and carrying no greater than 60 pounds; working in an environment to allow the flexibility for frequent positional changes as needed to alleviate the onset of low back pain; upper extremities used and dexterity without specific restrictions; repetitive squatting limited to an occasional basis; and limited positional activities requiring trunk flexation, either seated or standing, to an occasional basis. The employer understood the claimant was medically released to work in his regular occupation but the claimant said he could not. The claimant submitted a written resignation on November 8, 2006.

The claimant filed a claim for unemployment insurance benefits effective October 1, 2006 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 section 96.5-1.

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 claimant demonstrated his intent to quit and acted to carry it out by submitting his written resignation. Although there does not appear to be any dispute that the claimant sustained a work-related-injury in January 2005, he did reach maximum medical improvement in March 2006. Except for the claimant's testimony, there is no evidence that he could not perform his regular job duties within his restrictions after reaching maximum medical improvement. No medical documentation was provided. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). Furthermore, the claimant's testimony cannot be relied upon as he falsely claimed that he had no prior back injuries until after the administrative law judge reported the fact-finder understood him to report he sustained a previous non-work-related back injury in 2001.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. He has not satisfied that burden and benefits are denied.

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 the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated November 1, 2006, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld 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 claimant is overpaid benefits in the amount of \$1,428.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs