

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANDREW ARDUSER
Claimant

FAREWAY STORES INC
Employer

APPEAL 14A-UI-12554-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/09/14
Claimant: Respondent (2R)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the December 4, 2014, (reference 02) unemployment insurance decision that allowed benefits based upon a finding that the claimant voluntarily quit with good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2015. The claimant did not call to participate in the hearing. The employer participated through Training and Development Specialist Maggie Worrall and Grocery Manager Dennis Schut. The Employer's Exhibit One was admitted. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits.

ISSUES:

Did the claimant voluntarily leave the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as an assistant manager and was separated from employment on August 26, 2014.

Prior the claimant's separation, he had been counseled about his temper on two occasions. On August 21, 2014, he was involved in an incident with unloading a truck. During the unloading, a pallet was incorrectly placed by an employee, and the claimant lost his temper and began yelling. He was placed on an unpaid suspension following the incident, pending investigation. The grocery manager, Dennis Schut, called the claimant and told him to report to work on

August 26, 2014 at noon. The claimant was placed on the schedule to work and no further disciplinary action was prepared. The claimant voluntarily quit his job, when he showed up on August 26, 2014 around 9:00 a.m. and gave his keys to Deb Dopson. At no time was the claimant told he had been fired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Code § 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). The employer credibly testified that the claimant's failure to report to work at noon on August 26, 2014 was an abandonment of the job. Benefits are denied.

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined that it did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits.

DECISION:

The December 4, 2014, (reference 02) decision is reversed. The claimant voluntarily quit without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. **REMAND:** The calculation of the overpayment is remanded to the benefit payment section of Iowa Workforce Development.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css