

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA J MOORE
Claimant

APPEAL NO: 06A-UI-09889-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOMEWOOD ELECTRIC INC
Employer

**OC: 09-10-06 R: 03
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 3, 2006, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 24, 2006 and concluded on November 2, 2006. Claimant participated with Stacey Bell. Employer participated through Dave Homewood, vice president; Preston Gingerich, supervisor; and Katie Organ, office manager.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time laborer until September 11, 2006 when he quit. On that date he left the job site at 9:30 a.m. before the 3:30 p.m. end of his shift. He arrived at the job site with Gingerich to set a service but it was raining so they intended to start roughing in the house. Claimant became increasingly upset because the site was not ready for them and Gingerich told claimant to perform other duties to keep busy for the day. Then he became more upset to discover his tape measure and some other tools missing. The two looked in the truck and driveway but could not find it. They then pulled items from the truck to get ready to work. As they continued setting up for the day's work, claimant became increasingly upset with the people there not being ready and the missing tape. He did not ask Gingerich to borrow one and one was not offered. Claimant told Gingerich he was "going home for the day." When asked if he intended to call Homewood, claimant replied he did not. Claimant called Bell, his fiancée and then told Gingerich again he was going home for the day. Gingerich asked him again about calling Homewood and claimant said he would not. Bell arrived and claimant told Gingerich he was going to look for another job. Gingerich did not ask him if he was quitting but suggested a couple of places to look. Claimant retrieved all of his personal tools out of the truck and left with Bell.

Claimant went to the office where he saw Organ and clocked out. He told her he was upset and was leaving because his tool was gone. He had the day off for a combination of vacation and a doctor's appointment on September 12, 2006. When he reported for work on September 13, Homewood told him he did not work there any longer.

Claimant has received unemployment benefits since filing a claim with an effective date of September 10, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left his employment without good cause attributable to the employer.

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.

871 IAC 24.25(27) 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 § 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 § 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:

- (27) The claimant left rather than perform the assigned work as instructed.

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Since claimant did not take reasonable steps to speak with Homewood to report his tools missing or seek a loan of tools for the day so he could work he had not met the requirements of

Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993) by first giving notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. While claimant did initially say he was leaving for the day, when he refused to call Homewood as Gingerich suggested and after he told Gingerich he was going to look for other work, employer reasonably believed he had quit the employment. Employer's refusal to rescind the resignation on September 13 did not amount to a discharge from employment. Benefits are denied.

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

DECISION:

The October 3, 2006, reference 01, decision is reversed. Claimant voluntarily left his employment 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. Claimant is overpaid benefits in the amount of \$1,757.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs