

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY CAULK
Claimant

APPEAL NO: 08A-UI-03643-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE WOOD SHAVINGS INC
Employer

OC: 03-16-08 R: 02
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 4, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on May 7, 2008 and continued May 29, 2008. The claimant participated in the hearing with Former Welder Carlos Jung. Frank Sloan, President and Colleen Adkins, Human Resources, participated in the hearing on behalf of the employer and were represented by Attorney Scott Beattie. Claimant's Exhibit A through I and Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time trailer mechanic for Hawkeye Wood Shavings from September 4, 2001 to March 14, 2008. On October 5, 2001, the claimant and employer entered into an agreement that the claimant could rent the property adjacent to the company as long as he was willing to be available 24/7 to let trucks in and out (Claimant's Exhibit A). On April 9, 2003, the claimant signed a memo agreeing he would be available to help truck drivers at night after hours and if he did not wish to do so he would need to move out but would not lose his job (Employer's Exhibit One). On December 12, 2007, the claimant went to clock in and found a note instructing him to repair tires he had previously repaired unsuccessfully three days earlier and not to clock in until the tire work was completed (Claimant's Exhibit B). The claimant did as told and clocked in at 2:00 p.m. Later that day the claimant was talking about the situation with Welder Carlos Jung and the employer came in and Mr. Jung challenged him about not allowing the claimant to clock in when working. Mr. Jung had just returned from a one-month long vacation and the employer laid him off due to a lack of work. On January 9, 2008, Mr. Jung went in to pick up his equipment and told the employer he was going to file charges with the National Labor Relations Board. Mr. Jung then went to speak to the claimant who told him he

had to “work for nothing” and would not punch in when called at night. The employer issued the claimant a written warning notifying the claimant he would have to move out of the house and that Mr. Jung had “no business in the trailer shop while he was laid off or no business talking to (the claimant) when he was on duty” (Claimant’s Exhibit C). The warning also stated “no loitering, or discussion with other employees, laid off or terminated, will take place on this property or while clocked in during working hours” (Claimant’s Exhibit C). The claimant received a second written warning January 9, 2008, for leaving for lunch at 11:19 a.m. and failing to return to work (Claimant’s Exhibit D). Later that day the employer received a fax from the NLRB that a complaint had been filed against him. On January 23, 2008, the claimant received a 30 Day Notice of Termination from the employer’s attorney that his “tenancy with the undersigned will terminate on February 29, 2008” (Claimant’s Exhibit E). On February 28, 2008, the claimant received a written warning for failing to give the employer notice of a request for time off after the claimant went to the office at 10:13 a.m. and said he had to leave to take care of some legal matters (Claimant’s Exhibit F). He had also taken two half-days off to look for an apartment without prior approval (Claimant’s Exhibit F). The warning stated the claimant needed to ask for time off ahead of time pursuant to the employer’s policy which states, “If you need a day off please give as much notice as possible. Don’t just come in and say that I am taking tomorrow off. You most likely will not get the response that you want (Claimant’s Exhibit F and Employer’s Exhibit Two). On March 11, 2008, the claimant went to court and was ordered to move by March 31, 2008. On March 14, 2008, the claimant received a written warning for failing to return to work after court March 11, 2008 (Claimant’s Exhibit H). On March 14, 2008, the claimant turned in his keys and said he no longer wanted to work there any longer (Claimant’s Exhibit I). The claimant testified he quit because he felt the employer was retaliating against him for Mr. Jung’s NLRB complaint that the claimant agreed to be a witness to. He never spoke to the employer about his concerns prior to leaving and the employer had continuing work available. The claimant had received 24 written or verbal warnings prior to agreeing to act as a witness on Mr. Jung’s NLRB claim (Employer’s Exhibit Four).

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. While the employer illegally forced the claimant to work off the clock December 12, 2007, and tried to limit his free speech rights January 9, 2008, the claimant did not voluntarily quit work until March 14, 2008, after he was evicted for stating he

would no longer work 24/7 as the parties agreed in October 2001 and again in April 2003. The claimant believes the employer retaliated against him for going to the NLRB as a witness but the employer had issued 26 warnings to the claimant prior to learning of the NLRB complaint and the warnings issued after he knew of the NLRB charge related to his failure to request time off ahead of time or return to work after appointments as required by the employer's policy. Although there seems little doubt that the employer was demanding and controlling and was not reluctant to issue warnings, his behavior appears consistent throughout the claimant's employment and the claimant has not demonstrated that his actions were retaliatory in nature. Under these circumstances the administrative law judge cannot conclude that the claimant's leaving was for good cause attributable to the employer as defined by Iowa law. Therefore, 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 April 4, 2008, reference 01, decision is reversed. The 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. The claimant is overpaid benefits in the amount of \$3,564.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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