

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time dock associate from July 7, 2004 through August 22, 2005. His last day of work was August 5, 2005, he was a no-call/no-show the next two workdays, and he did not return to work after that. The claimant left work to go to Waterloo, Iowa to take care of his girlfriend, who had a stroke. He did not contact his employer the first two days he was gone but called the dock manager on the third day and explained that he was in Waterloo. The claimant did not return to work and the employer prepared the separation paperwork on August 22, 2005. The claimant contacted the employer in September 2005 and was told he no longer had a job.

The claimant filed a claim for unemployment insurance benefits effective August 26, 2005 and has received benefits after the separation from employment in the amount of \$1,362.00.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

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 demonstrated his intent to quit and acted to carry it out by failing to return to work after August 5, 2005.

871 IAC 24.25(23) 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 section 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 section 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The claimant left his employment in West Des Moines, Iowa to go to Waterloo, Iowa to take care of his girlfriend, who had a stroke. While the claimant may have had compelling personal reasons to leave his employment, the reasons are unrelated to the employer. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him and the claimant failed to satisfy that burden. Iowa Code section 96.6-2. 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 August 26, 2005, 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 claimant is overpaid benefits in the amount of \$1,362.00.

sdb/kjw