

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA GREEN
Claimant

APPEAL NO: 08A-UI-01323-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BREDA LOCKER & GROCERY INC
Employer

**OC: 01/06/08 R: 01
Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Breda Locker & Grocery, Inc. (employer), doing business as Mike's, appealed an unemployment insurance decision dated January 30, 2008, reference 01, which held that Joshua Green (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 February 21, 2008. The claimant participated in the hearing. The employer participated through owner Mike Ruhnke, Tim Wempe and Scott Bernholtz. 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 part-time meat processor on August 30, 2006 and went full-time on December 31, 2007. He voluntarily quit his employment effective January 11, 2008. On two previous occasions, the claimant became angry and walked off the job saying he quit. The owner was able to talk the claimant into returning to work both times. The claimant missed work on January 8, 2008 because his car went into the ditch. He called the employer to tell him about it and to report that he had to go to the doctor. The claimant later called and said he had a little injury and had to go back to the doctor. On January 9 the claimant went to work as usual but about 1:00 p.m. told the employer he had to go to the doctor that afternoon. The employer's business is very small and the employer was planning on leaving that afternoon also but would not be able to leave if the claimant left. The employer was upset with the claimant but left for lunch. He came back 30 minutes later and told the claimant just to take off the rest of the day. The claimant asked if the employer was firing him and the employer said no. The claimant asked if the employer wanted him to return to work the next

day and the employer said yes. The claimant then said he was giving his two-week notice and left after that.

On the morning of January 10, 2008 the claimant called the employer and said his car broke down. The employer told him to get it fixed so he could come to work. The claimant never called or reported to work that day. However, that evening the claimant called the employer and said he could not get a ride to work on the following day. The claimant asked the employer if he could provide another employee's telephone number so the claimant could get a ride with that employee but the employer did not have the number at home. The claimant was upset because the employer would not go down to the meat locker to retrieve the telephone number. The claimant asked what was going to happen at work the next day and the employer refused to discuss it over the phone. The employer told him they would just talk about it at work. The claimant never called or reported to work the next day or any day after that.

The employer finally called the claimant on the morning of January 15, 2008 to find out what was going on. He left a message but the claimant never returned the call. It was at this time that the employer made arrangements to hire another employee to take the claimant's place. The employer received a telephone call from the Fort Dodge welfare office on January 16, 2008. The welfare office wanted information about the claimant's job since he had applied for food stamps. The welfare office reported the claimant said he did not know whether he was fired or whether he quit. The employer asked what it was when an employee gives a two-week notice and the welfare office said that he must have quit. Approximately one week later, the claimant returned to work to pick up his paycheck. He told the owner and two employees that he had been in jail for five days because of problems with his estranged wife.

The claimant filed a claim for unemployment insurance benefits effective January 6, 2008 and has received benefits after the separation from employment.

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 §§ 96.5-1 and 96.5-2-a.

The claimant contends he was discharged but the evidence demonstrates that he voluntarily quit. The claimant was not a credible witness because he provided inconsistent and even contradictory testimony. He said the employer told him on the evening of January 10 that he was not needed and he was not to return to work. However, he subsequently testified that he called in to report his absence on the following morning which is really not something an employee would do if he had been fired. The claimant testified that he told the employer what time he had to go to the doctor on the morning of January 9 when he arrived at work but later testified that he did not know what time he had to go to the doctor until approximately 10:00 a.m. that morning. Three witnesses for the employer testified the claimant told them he had been in jail for five days but the claimant denies making that statement.

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 when he gave his two-week notice. He carried out that intent when he failed to call or report to work on January 11, 2008 and after

that. Continuing work was available and the employer did not discharge the claimant. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. 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 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 January 30, 2008, 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 \$741.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs