

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH T BEDARD
Claimant

APPEAL NO. 07A-UI-06524-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORKERY INDUSTRIES LC
Employer

OC: 06/03/07 R: 03
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Corkery Industries LC (employer) appealed a representative's June 27, 2007 decision (reference 01) that concluded Joseph T. Bedard (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 24, 2007. The claimant properly responded to the hearing notice. The claimant was not available for the hearing. A message was left for the claimant to contact the Appeals Section if he wanted to participate in the hearing. The claimant did not respond to the message left on an answering machine. The employer also properly responded to the hearing notice. The employer was not available for the hearing either.

At 9:40 a.m. the employer responded to the message left on an answering machine and requested that the hearing be reopened. Based on the employer's request to reopen the hearing, the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 14, 2007. The employer hired the claimant to work as a full-time machine operator.

On May 10, 2007, the claimant called the maintenance supervisor at his home at 1:30 a.m. The claimant complained that the machine he operated was plugging up and shaking. The claimant told the maintenance supervisor he wanted more money to operate the employer's bad equipment and said if he did not receive more money, he would quit. Because the machine the claimant operated was not working properly, the claimant also indicated that he was going to shut down the machine so maintenance could look at the machine later in the day.

After the claimant left work on May 10, he did not return to work even though he was scheduled to work. Before the claimant established his claim for benefits, the week of June 3, he left two messages for the plant manager, Larry Corkery, to call the claimant. Corkery did not return to the claimant's call.

After the claimant established a claim for benefits, he filed claims for the weeks ending June 9 through July 21, 2007. He received a total of \$1,940.00 in benefits for these weeks.

The morning of July 24, the employer's production line suddenly went down between 8:10 and 8:20 a.m. When the production line goes down, everyone stops what they are doing to get the line back up. Corkery went to the production line to get it started again and worked on it until it started again just before 9:40 a.m. When Corkery returned to his office, he responded to the message left on his answering machine about the unemployment insurance hearing. The employer made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). Based on the emergency situation at the employer's facility, the employer established good cause to reopen the hearing. In this case, the hearing will not be reopened; because, based on the information in the administrative record, the decision is favorable to the employer.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The record indicates the claimant voluntarily quit his employment when he failed to return to work after May 10 even though he was scheduled to work after May 10, 2007. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive unemployment insurance benefits. Iowa Code § 96.6-2.

The law presumes a claimant quits without good cause when he leaves because he is not satisfied with his wages. 871 IAC 24.25(13). The law also presumes a claimant quits with good cause if he leaves because of detrimental working conditions. 871 IAC 24.26(4).

Even though the representative's decision concluded the claimant quit because of detrimental working conditions, the record does not support this conclusion. Problems with machinery during a May 10 shift do not establish detrimental working conditions. Also, if the claimant quit for detrimental working conditions, it is highly unlikely he would have contacted the employer later and asked to be rehired. The record indicates the claimant was frustrated with a piece of machinery he was operating on May 10 and wanted more money for the work he was doing. Since schedules are posted and the claimant was scheduled to work after May 10, the facts do

not establish why he did not return to work after May 10, 2007. It is speculation that the claimant did not return to work because of problems with machinery on May 10 or because he wanted more money. If the claimant wanted to talk to Corkery, he could have easily come to the employer's facility during the time Corkery worked, but he did not. The claimant did not establish that he quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of June 3, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending June 9 through July 21, 2007. The claimant has been overpaid \$1,940.00 in benefits he received for these weeks.

DECISION:

Even though the employer established good cause to reopen the hearing, the request to reopen the hearing is denied because the decision is in the employer's favor. The representative's June 27, 2007 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 3, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending June 9 through July 21 2007. The claimant has been overpaid and must repay a total of \$1,940.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw