

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TRAVIS R BUCKINGHAM
Claimant

APPEAL NO. 18A-UI-06867-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUCKINGHAM AUTO CRUSHING INC
Employer

OC: 05/27/18
Claimant: Respondent (2)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 13, 2018, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on May 21, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on July 12, 2018. Claimant Travis Buckingham did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Kim Buckingham represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit 1 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Travis Buckingham was employed by Buckingham Auto Crushing, Inc., as a full-time truck driver from October 2017 until May 21, 2018, when he voluntarily quit the employment. On May 21, Travis Buckingham called Kim Buckingham, President and owner. Travis Buckingham told Kim Buckingham that it was "not going to work out" and that he was "going to find another job." At the time Travis Buckingham called Kim Buckingham, Travis Buckingham's assigned truck was

sitting in the employer's lot with a load of freight on it that Travis Buckingham was supposed to have transported on May 20, 2018. Travis Buckingham's notice to Kim Buckingham that he was leaving the employment followed interpersonal conflict between Travis Buckingham and Austin Buckingham. Austin Buckingham and Kim Buckingham were Travis Buckingham's supervisors and cousins. After Travis Buckingham told Kim Buckingham that he was done with the employment, Kim Buckingham sent Travis Buckingham a text message indicating that he, Kim Buckingham, was going to transport the load of freight sitting in the employer's lot. The employer continued to have work available for Travis Buckingham, but Travis Buckingham did not return to the employment.

Travis Buckingham established an original claim for unemployment insurance benefits that was effective May 27, 2018 and has received \$2,336.00 in benefits for the seven-week period of May 27, 2018 through July 14, 2018. Buckingham Auto Crushing is a base period employer for purposes of the claim.

On June 12, 2018, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Travis Buckingham's separation from the employment. The fact-finding interview was scheduled for 2:10 p.m. Travis Buckingham participated in the fact-finding interview and provided an oral statement to the deputy. Travis Buckingham intentionally misstated material facts by asserting that he was performing the work to the best of his ability and that the employer had ended the employment. At 2:17 p.m., the deputy attempted to reach Chanda Buckingham, Vice President, at the telephone number Ms. Buckingham had designated in the Notice of Claim/protest as the number at which the deputy should reach her for the fact-finding interview. When Ms. Buckingham did not answer, the deputy left a voice mail message for Ms. Buckingham. The deputy advised that Ms. Buckingham had 30 minutes to return the call. Ms. Buckingham had not answer the phone at 2:17 p.m. because she had been speaking with someone on another line. At 2:24 p.m., Ms. Buckingham returned the deputy's call, but the deputy did not answer. At 2:25 p.m., Ms. Buckingham again attempted to return the deputy's call. When the deputy did not answer, Ms. Buckingham left a voicemail message advising that she was returning the deputy's call.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(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 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:

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

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. The weight of the evidence indicates that Travis Buckingham ended the employment via his phone call to Kim Buckingham on May 21, 2018 by stating the employment was "not going to work out" and that he was "going to find another job." Travis Buckingham further indicated that he was ending the employment by not hauling the assigned load that was waiting for him in the employer's lot and by not returning to perform further work, though the employer continued to have work available for him at the time. Travis Buckingham's voluntary separation from the employment appears to have been based primarily on interpersonal conflict between Travis Buckingham and Austin Buckingham. Travis Buckingham has presented no evidence to establish good cause for leaving the employment. Because the evidence establishes a voluntarily quit without good cause attributable to the employer, Travis Buckingham is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Travis Buckingham must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the base period employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Travis Buckingham received \$2,336.00 in benefits for the seven-week period of May 27, 2018 through July 14, 2018. This decision disqualifies Travis Buckingham for those benefits. Accordingly, Travis Buckingham is overpaid \$2,336.00 in benefits for the seven-week period of May 27, 2018 through July 14, 2018.

In this instance, the employer did not participate in the fact-finding interview only because the Agency did not provide the employer a reasonable opportunity to participate in response to the employer's timely efforts to participate. In addition, the weight of the evidence establishes that Travis Buckingham took advantage of the employer's absence from the fact-finding interview by intentionally misstating material facts to mislead the deputy. For these reasons, Travis Buckingham must repay the overpaid benefits. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The June 13, 2018, reference 01, decision is reversed. The claimant voluntarily quit the employment on May 21, 2018 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$2,336.00 in benefits for the seven-week period of May 27, 2018 through July 14, 2018. The claimant must repay the overpaid benefits. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs