

ISSUE: Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on October 28, 2003. He worked full time as a lead driver in the employer's over-the-road transportation company. His last day of work was February 6, 2005. On that date the claimant left his assigned truck and trailer at the employer's drop yard in Fort Worth, Texas. He did not respond to attempts by Mr. Hoover, the fleet manager, to contact him daily between February 7 and February 16, 2005. In fact, the claimant had intentionally abandoned his position, ostensibly due to a belief that his wages had effectively been cut.

During 2004, the employer paid the claimant a total of \$28,166.11, averaging out to \$541.66 per week. For the five weeks in 2005 the claimant worked for the employer, he was paid \$2,774.62, averaging out to \$554.93 per week. There had been no change and no intention to change or reduce the claimant's allowed miles per week or his mileage.

The claimant established a claim for unemployment insurance benefits effective August 14, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,944.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The law presumes a claimant has voluntarily quit with good cause when he quits because of a substantial change in the contract of hire. 871 IAC 24.26(1). In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in wage was, as a matter of law, a substantial change in the contract of hire. The Court in Dehmel cited cases from other jurisdictions that had held wage reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. The claimant has not shown that he had a substantial change in his

contract of hire, nor has he shown he had any good cause for quitting that was attributable to the employer; he has not satisfied his burden. 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 representative's September 16, 2005 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 7, 2005, benefits are withheld until such time as the claimant 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 \$1,944.00.

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