

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN E REESE
Claimant

APPEAL NO: 07A-UI-09302-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ANNA ENTERPRISES
STAFFING SOLUTIONS**
Employer

**OC: 01/07/07 R: 02
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 24, 2007, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 17, 2007. Claimant participated. Employer participated through Bill Van Sloun. Employer's Exhibit 1 was received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits, if he quit the employment without good cause attributable to the employer, and if so, whether he is overpaid benefits as a result.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time temporary maintenance worker at United Brick & Tile from January 16, 2007 until August 30, 2007 when he quit. He walked off the shift at 9:00 p.m. on August 30 after an argument with other employees. A supervisor, Will Hensley, was on his way in and when claimant was told Hensley was on his way, he left prior to the end of the shift at 2:30 a.m. on August 31 without notice to a supervisor. The truck was not broken and there was plenty of other work to be done, even if the truck was not available for use.

Claimant has received unemployment benefits since filing a claim with an additional claim date of August 26, 2007 effective date of January 7, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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(6) and (27) provide:

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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

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

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Claimant's decision to leave his shift without notice to or permission from the supervisor before his supervisor arrived to meet about the employee argument evinced an intention to quit working and was a voluntary leaving of employment without good cause attributable to the employer. 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 claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The September 24, 2007, reference 02, decision is reversed. Claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Claimant is overpaid benefits in the amount of \$2,274.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css