

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

BENJAMIN S EMERY

Claimant

and

STU'S PETROLEUM LLC

Employer

HEARING NUMBER: 18BUI-11991

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 24.26-4

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Benjamin S. Emery, worked for Stu's Petroleum, LLC from January 30, 2017 through October 27, 2017 as a full-time lube technician. In late September, 2017, the Claimant needed parts to fix his vehicle. The Employer offered to give Claimant the parts he needed, and Mr. Emery could pay the Employer back (\$300) over the next few pay periods. (29:37-30:57; 42:30-42:48) The Claimant gets paid every two weeks. Mr. Emery did not pay the Employer for the parts when he received his last check in September.

In early October, 2017, Dave Dixon (store manager) inadvertently deducted the entire amount \$300.00 from the Claimant's paycheck. (7:34) The Claimant was upset that such a large amount was taken from his paycheck (10:28-10:37) and he believed his pay was being kept from him unlawfully. The Employer (Chad Staudenmaier – president) directed Dixon to return \$150 to the Claimant and deduct that amount from the Claimant's next paycheck. (8:10) However, before that transaction transpired, the Claimant wrote a check for \$300 to satisfy the loan (8:17), which resulted in the Employer owing Mr. Emery \$150. (8:21)

At about 10:00 a.m. on October 27, 2017, the Employer came in and observed numerous boxes on the floor near the hoist, which created a trip hazard. He directed everyone in the bay to up the area before 5:00 p.m. before anyone would receive his check. (13:24-13:50; 21:49; Exhibit 4) Mr. Emery became angry and yelled profanities at the Employer within earshot of customers. (13:55-14:00) The Employer told the Claimant he was suspended and to leave so he could cool off. (43:20) Mr. Emery, who was still upset, believed the Employer was threatening to withhold his paycheck if he did not clean up the boxes. He demanded his paycheck, which he retrieved and quit. At the time of his separation, the Claimant and the Employer were even. (8:57-9:17)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: *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:

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...

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

(28) The claimant left after being reprimanded.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The Claimant vehemently argues he was terminated. However, the record supports that the Employer had no intention of severing the employment relationship as evidenced by the Employer's testimony, which is corroborated by several firsthand eyewitness accounts. In addition, the Employer provided documentary evidence to establish that he tried to encourage the Claimant to continue his employment prior to his actually walking off the job, as well as immediately thereafter.

While we certainly appreciate the Claimant's distress and financial predicament at having had such a large sum taken out of a single paycheck, the Employer tried to rectify that problem as soon as he realized the mistake. Based on this record, it appears that the Claimant's debt was satisfied, and was done so by the time the Claimant quit on October 27th. The Claimant's decision to walk off the job after being given a reasonable directive to clean up what was an accident-prone situation, and of which was not specifically aimed at him, is not justification for quitting with good cause attributable to the Employer. For this reason, we conclude that the Claimant did not satisfy his burden of proof.

DECISION:

The administrative law judge's decision dated December 14, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit without good cause attributable to the Employer. Accordingly, he is denied benefits until such time he has worked in and was paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(1)"g".

The Employer has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not follow the instructions on the notice of hearing. Therefore, good cause has not been established to remand this matter. The remand request is **DENIED**.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv