

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT GORECKI

Claimant

APPEAL NO. 11A-UI-05479-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 03/20/11

Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Heartland Express Inc. of Iowa (employer) appealed an unemployment insurance decision dated April 19, 2011, reference 01, which held that Scott Gorecki (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 19, 2011. The claimant participated in the hearing with his wife, Rosa Gorecki, in attendance. The employer participated through Lea Peters, human resources generalist; Dennis Wilkinson, vice-president of operations; and Brian Janssen, director of operations. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from August 4, 2010 through March 24, 2011. Vice-President of Operations Dennis Wilkinson heard the claimant had complained that he had been forced to stay out for seven weeks. Mr. Wilkinson investigated the matter and learned that the claimant had told the dispatcher that his wife moved from his home location of Florida to New Mexico so he had no reason to go home.

Mr. Wilkinson went to talk with the claimant and the claimant said that he quit. Mr. Wilkinson and Director of Operations Brian Janssen subsequently met with the claimant to discuss the matter. The claimant admitted in front of both that he did voluntarily quit but had changed his mind. The employer had already accepted his resignation. The claimant testified at the hearing that he never quit but the employer had no reason to discharge him.

The claimant filed a claim for unemployment insurance benefits effective March 20, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant testified he was discharged after the employer claimed he voluntarily quit. He denied that he voluntarily quit, but the preponderance of the evidence confirms he did quit and then changed his mind because the employer had no reason to discharge him. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant told Dennis Wilkinson, vice-president of operations, that he quit and he subsequently admitted to Mr. Wilkinson and Brian Janssen, director of operations, in a separate conversation that he did quit but wanted to change his mind.

The Iowa Court of Appeals considers it a voluntary quit when a claimant gives notice of resignation which is accepted by the employer, even though the claimant subsequently attempts to withdraw the resignation. *Langley v. EAB*, 490 N.W.2d 300 (Iowa App. 1992). It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated April 19, 2011, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw