

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY D HACKETT

Claimant

APPEAL NO. 15A-UI-00732-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORMEL FOODS CORPORATION

Employer

OC: 12/21/14

Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 7, 2015, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible, and that the employer's account could be charged for benefits; based on a December 26, 2014 separation. After due notice was issued, a hearing was held on February 10, 2015. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Jerry Sander of Employers Unity represented the employer and presented testimony through Erin Montgomery. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the purpose of determining whether the employer participated in the fact-finding interview within the meaning of the law 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 or that relieves the employer of liability for benefits.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay the benefits he has received.

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: The claimant was employed as a full-time service driver/fork truck operator from July 10, 2014 until December 16, 2014 when he walked off the job mid-shift. The claimant's departure from the workplace followed a discussion in the workplace about safe operation of the fork trucks.

The claimant had not been reprimanded. The claimant's work hours were 2:30 p.m. to 11:30 p.m. The claimant left at about 7:00 p.m. without telling anyone that he was leaving. The employer learned of the claimant's departure when another employee approached a supervisor about being understaffed. The claimant's brother also worked for the employer. The claimant's supervisor asked the brother to contact the claimant. The claimant advised that he had left because he was tired of being blamed for work matters.

At 9:00 p.m. on December 16 the claimant's mother notified the employer that the claimant had been life-flighted to a hospital due to a drug overdose. The attending circumstances suggest an intentional drug overdose. At about 11:30 p.m. the claimant's wife notified the employer that the claimant had been admitted to a hospital and asked whether the claimant still had a job. The employer advised that the employer would have to further investigate the matter and that the employer would discuss the matter with the claimant when he was released to return to work.

The claimant contacted the employer on December 24, 2014 to discuss his return to the employment. The employer told the claimant he would need to provide a medical release. The claimant met with the employer on December 26, 2014 and provided a medical release. The employer advised that claimant that the employer deemed his departure on December 16 to be gross misconduct and that employer deemed the employment done.

The claimant established a claim for benefits that was effective December 21, 2014 and received \$2429 in benefits for the seven-week period of December 21, 2014 through February 7, 2015.

On January 6, 2015 Iowa Workforce Development held a fact-finding interview to address the claimant's eligibility for benefits and the employer's liability for benefits in connection with the separation. The employer changed third-party representatives effective January 1, 2015. At the time the employer submitted its protest and at the time notice was issued to the employer of the fact-finding interview, the employer's representative was Equifax, formerly known as Talx. The employer's new representative is Employers Unity. In the employer's protest, Equifax indicated that Lisa Kubot of Equifax would represent the employer at the fact-finding interview. At the time of the fact-finding interview, Ms. Kubot was not available at the number provided for the fact-finding interview. The employer's participation in the fact-finding interview was limited to the short narrative statement set forth in the protest. That statement indicated that the claimant was considered to have voluntarily quit after walking off the job. The narrative indicated that a supervisor had spoken to the claimant about fork truck damage but had not disciplined the claimant. The narrative indicated that coworkers had reported the claimant was not at work about 30 minutes after he left and that the claimant had left at 7:00 p.m. The narrative indicated that the claimant had been performing his duties in service manufacturing before he left. The narrative indicted that the claimant had returned on December 26, 2014, had stated that he had made a mistake and that he had taking the December 16 discussion personally. The narrative indicated that the claimant's job had not been in jeopardy before he left on December 16.

At the fact-finding interview, the claimant told the Claims Deputy that he believed he had been discharged for attendance on December 26, 2014 and that he had left on December 16 due to illness. The claimant represented that he had gone to an emergency room in Maxwell and that his wife had contacted the employer. The claimant indicated that he had been discharged from the hospital on December 17, 2014 and had notified the employer that same day. The claimant told the Claims Deputy that he saw his family doctor on December 19, 2014, that he contacted the employer to advise he had a release to return to work, and that the employer told him to

appear for a meeting on December 26, 2014. The claimant told the Claims Deputy that the employer advised him that the employer would like to keep him employment but had to terminate his employment due to attendance.

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. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 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 871 IAC 24.25.

Iowa Code § 96.5-1-f 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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

A claimant who elects to quit employment due to dissatisfaction with the work environment, a personality conflict with a supervisor, in response to a reprimand, or because the claimant refuses to perform the work as directed, is presumed to have voluntarily quit without good cause attributable to the employer. See Iowa Admin. Code section 871-24.25(21), (22), (27) and (28).

Because the claimant did not participate in the hearing and because the employer did not have the supervisor or other employees with personal knowledge testify at the hearing, there are gaps in the evidence in the record. Nonetheless the administrative law judge must decide the matter based on the evidence in the record. The claimant left work on December 16, 2014 prior to the scheduled end of his shift in response to what he believed to be a verbal reprimand from his supervisor regarding workplace safety and protection of the employer's property. The claimant did not speak to anyone before he left, either to indicate that he was quitting or that he was just leaving for the day. The information from the telephone call, though it is hearsay within hearsay, indicates an intention to quit the employment. What transpired immediately following that telephone call indicates compelling personal circumstances in connection with the claimant's departure from work on December 16. The claimant subsequently contacted the employer about returning to the employer and the employer declined to reemploy the claimant. The statutory exception to the disqualification that applies to

a voluntary separation for compelling personal reasons is conditioned on the employee providing the employer with prior notice of the need to be away from work. The claimant did not provide the employer with such notice.

The weight of the evidence establishes voluntarily quit the employment without good cause attributable to the employer. Accordingly, 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, provided he is otherwise eligible.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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 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, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$2429 in benefits for the seven-week period of December 21, 2014 through February 7, 2015.

Iowa Administrative Code rule 817 IAC24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.

24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The employer had appropriate notice of the fact-finding interview through its designated representative of record at the time of the protest and at the time notice of the fact-finding interview was issued. The employer's representative of record was not available for the fact-finding interview at the number the representative had provided for that proceeding. The narrative set forth in the protest indicates that the employer was in contact with the employer regarding the claim for benefits. That short narrative, absent the presence of anyone on behalf of the employer at the time of the fact-finding interview and indication that the employer had anyone standing by to participate in the fact-finding interview, did not meet the definition of participation. The evidence does not support a conclusion that the claimant engaged in fraud or intentional misrepresentation at the fact-finding interview. Accordingly, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits. The employer's account will not be charged for benefits paid to the claimant subsequent to the entry date of this decision.

DECISION:

The January 7, 2015, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$2429 in benefits for the seven-week period of December 21, 2014 through February 7, 2015. The claimant is not required to repay those benefits. Those benefits may be assessed to the employer's account. The employer's account will not be charged for benefits paid to the claimant subsequent to the entry date of this decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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