

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY C WRIGHT
Claimant

APPEAL NO. 13A-UI-05694-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 02/10/13
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Westar Foods, Inc. filed a timely appeal from a representative's decision dated May 8, 2013, reference 02, which held the claimant eligible to receive unemployment insurance benefits finding that the claimant voluntarily quit work because of difficulty in obtaining pay. After due notice was provided, a telephone hearing was held on June 19, 2013. Although the claimant was duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Jeff Oswald, Hearing Representative, and Ms. Jill Lang, District Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Gregory Wright was employed by Westar Foods, Inc. from December 1, 2011 until April 17, 2013 when he was walked off the job. Mr. Wright was employed as a part-time biscuit maker/cook and was paid by the hour. His last immediate supervisor was Ms. Denise Digby.

Mr. Wright left his employment Westar Foods, Inc. on April 17, 2013 due to apparent dissatisfaction with a pay discrepancy.

Ms. Lang, the company's district manager, had met with Mr. Wright the preceding Friday, April 12, 2013 and explained to Mr. Wright that there might temporarily be a pay discrepancy because information in the company computers did not coincide with the information entered into the local computer at the facility where Mr. Wright was employed.

Mr. Wright had been promised a \$.50 pay increase to the rate of \$8.00 per hour by his supervisor. The supervisor mistakenly believed that the claimant was at the rate of \$7.50 per hour at the time because the facility computer did not reflect that Mr. Wright was currently

receiving \$7.75 per hour. Based upon the supervisor's statement that he would get a \$.50 per hour pay increase, Mr. Wright expected his pay to be \$8.25 per hour.

Because Ms. Lang anticipated that the issue would not yet be resolved on the next paycheck, she purposely met with Mr. Wright to explain in advance the situation. Ms. Lang promised to make any necessary pay adjustments that were necessary and instructed Mr. Wright to bring any discrepancies on his next paycheck to her attention. On April 17, 2013 when the claimant was next paid, Mr. Wright walked off the job after receiving his pay apparently dissatisfied with the increase. The claimant did not go back to Ms. Lang as instructed so that his pay could be adjusted but instead quit his job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without 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(13) 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. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reason for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

In the case at hand, the employer's witness participated personally and testified that she had met with the claimant on April 12, 2013 to inform Mr. Wright in advance that there may be a potential pay discrepancy and that if so, she would resolve the matter. The claimant had been told by his supervisor that his pay was being increased \$.50 per hour to the rate of \$8.00 per hour. The claimant believed that the \$.50 increase would have put him at \$8.25 per hour because he was already getting \$7.75 per hour in pay from the company. Ms. Lang promised to resolve any pay discrepancies with the claimant if he brought them to her attention.

On April 17, 2013, the claimant left employment without notice to the employer when he apparently did not agree with the hourly rate on his pay check. The claimant did not exercise the specific option that was given to him by Ms. Lang of reporting the matter giving Ms. Lang a reasonable opportunity to correct any discrepancies.

Because the claimant was informed in advance of any potential issue and the employer had promised to resolve it, but the claimant elected to leave employment instead of allowing the employer to do so, the administrative law judge concludes the claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

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 would have to repay benefits.

DECISION:

The representative's decision dated May 8, 2013, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and been paid wages for insured work equal to times his weekly benefit amount providing that he is otherwise eligible. The matter is remanded to the Claims Section for an investigation and determination of the overpayment issue.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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