

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID R SPRACKLIN
Claimant

APPEAL NO. 06A-UI-11066-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 10/08/06 R: 02
Claimant: Respondent (2)**

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Tyson Fresh Meats filed a timely appeal from the November 2, 2006, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on December 12, 2006. Claimant David Spracklin participated. Employment Manager Terry Carmichael represented the employer and presented additional testimony through General Supervisor Roger Baumgartner and Yard Supervisor Jeff Gift. The administrative law judge took official notice of the Agency's records regarding benefits disbursed to the claimant.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer. It was not.

Whether the claimant has been overpaid benefits. He has.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: David Spracklin was employed by Tyson Fresh Meats as a full-time laborer from March 13, 2006 until September 28, 2006, when he voluntarily quit. Though Mr. Spracklin was a full-time production laborer, the employer had designated Mr. Spracklin as a safety captain or "gold hat." As a gold hat, Mr. Spracklin spent one hour of his shift identifying safety issues in the work place and drafting work orders to address those issues, rather than working in production. Aside from the time away from production responsibilities, all other aspects of Mr. Spracklin's work conditions, including pay, remained the same. Yard Supervisor Jeff Gift was Mr. Spracklin's immediate supervisor.

On September 28, Mr. Gift met with Mr. Spracklin to discuss Mr. Spracklin's accrued attendance points and the impact on his assigned duties. To be eligible to be a gold hat, Mr. Spracklin's attendance points could not exceed six. As of September 28, Mr. Spracklin had incurred 10 attendance points. During the meeting on September 28, Mr. Gift advised Mr. Spracklin that the employer was going to relieve him of his gold hat responsibilities due to the accrual of attendance points. Mr. Spracklin advised Ms. Gift that he was quitting in response to the loss of

the gold hat status. The conversation had lasted approximately two minutes before Mr. Spracklin terminated the conversation and departed the workplace. General Supervisor Roger Baumgartner wanted to further discuss the matter with Mr. Spracklin, but Mr. Spracklin departed the workplace before Mr. Baumgartner could speak to him. Mr. Spracklin did not thereafter report for work. The employer continued to have production work available for Mr. Spracklin. After Mr. Spracklin had been absent without notifying the employer for at least five shifts, the employer concluded on October 5 that Mr. Spracklin had abandoned the employment.

Mr. Spracklin established a claim for benefits that was effective October 8, 2006 and has received benefits totaling \$2,637.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Spracklin's voluntary quit was for 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.

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.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

On the other hand, a quit in response to a reprimand is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28).

The evidence in the record indicates that Mr. Spracklin's status as a safety captain was contingent upon him meeting ongoing attendance standards. The evidence indicates that loss of the gold hat status did not amount to a drastic modification in the type of work Mr. Spracklin performed for the employer. Mr. Spracklin's safety captain duties had been limited to one hour per shift. Mr. Spracklin otherwise continued as a production laborer. Mr. Spracklin's safety duties were closely linked to the production process. Aside from the limited break from the production line, all other conditions of employment remained constant. The administrative law judge concludes there was loss of gold hat status did not amount to substantial change in the conditions of employment. See 871 IAC 24.26(1). The employer continued to have work available for Mr. Spracklin, but Mr. Spracklin did not return to work after departing on September 28. The employer waited several days before concluding Mr. Spracklin did not intend to return. The evidence indicates that Mr. Spracklin quit in response to being reprimanded.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Spracklin voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Spracklin 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 employer's account shall not be charged for benefits paid to Mr. Spracklin.

Iowa Code section 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 Mr. Spracklin received benefits for which he has been deemed ineligible, those benefits constitute an overpayment Mr. Spracklin must repay to Iowa Workforce Development. Mr. Spracklin is overpaid \$2,637.00.

DECISION:

The Agency representative's November 2, 2006, reference 02, 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 and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$2,637.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs