

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATHEW A LINDERBAUM
Claimant

APPEAL NO: 13A-UI-14315-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEED SAVERS EXCHANGE INC
Employer

OC: 12/01/13

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Seed Savers Exchange, Inc. (employer) appealed a representative's December 19, 2013 decision (reference 01) that concluded Mathew A. Linderbaum (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 23, 2014. The claimant participated in the hearing. Tom Wahlberg appeared on the employer's behalf; one other witness, Lynne Rilling, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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.

ISSUES:

Did the claimant voluntarily quit for a good cause attributable to the employer? Was the claimant overpaid unemployment insurance benefits and is that overpayment subject to recovery?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on February 21, 2011. He worked full time as a seed packing technician through June 2013. In June of 2013 he applied for and was granted a lateral position as an order fulfillment and gardens assistant; the hours and rate of pay were the same, but the specified duties did include some more shipping duties, an area into which the claimant wished to gain experience.

The job description for an order fulfillment and gardens assistant had always also included as the first listed duty and responsibility "operate seed packing equipment." When the claimant

became an order fulfillment and gardens assistant, the employer sought to find a replacement "seed packing technician," whose first listed responsibility was "packaging seed," but was unable to find a suitable candidate. As a result, the employer determined to eliminate the "seed packing technician" position and to hire a third "order fulfillment and gardens assistant" and then to rotate the seed packing duties relatively equally through the three assistants. The claimant was unhappy with this arrangement, as he felt that he was not actually being given the internal position transfer that he had sought and been told he was being given. As a result, on October 28, 2013 he tendered notice of his resignation; under that notice, he worked through November 8, 2013.

The claimant established a claim for unemployment insurance benefits effective December 1, 2013. A fact-finding interview was held with a Claims representative on December 16, 2013. Both the claimant and the employer, through Wahlberg, participated directly in the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$2,416.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The law presumes a claimant has voluntarily quit with good cause when he quits because of a substantial change in the contract of hire. 871 IAC 24.26(1); *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). The change in the distribution of the seed packing duties amongst the order fulfillment and garden assistant employees which the employer was implementing was not a substantial change in the claimant's job duties. The claimant has not satisfied his burden. Benefits are denied.

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 benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's December 19, 2013 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 8, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid \$2,416.00, which is subject to recovery.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs