

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEWIS H MOVISH

Claimant

APPEAL NO. 07A-UI-10779-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

**OC: 10/28/07 R: 12
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Heartland Express (employer) appealed a representative's November 20, 2007 decision (reference 01) that concluded Lewis Movish (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 13, 2007. The claimant participated personally. The employer was represented by Lea Peters, Human Resources Generalist, and participated by Kevin Kusner, Terminal Manager, and Thomas Kasenberg, Director of North East Operations. The claimant offered and Exhibits A and B were received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

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 hired on November 26, 1996, as a full-time over-the-road regional driver. At the time drivers are hired, the employer investigates where the driver resides. Drivers must live within a certain area to be hired due to driving safety concerns. When the claimant was hired to work out of the Columbus, Ohio, office, he was living within the area, in Michigan.

The claimant planned to move to New Mexico from Michigan. The employer told the claimant in the summer of 2007 that he should contact the Phoenix office for transfer approval. The claimant did not hear the employer say this. Even if he had heard, the claimant did not think that he had to get permission to start working out of a different office.

The claimant planned to take one week vacation after he left work on September 27, 2007. The Columbus Terminal Manager got the Phoenix Terminal Manager on the telephone to speak to the claimant. The Phoenix Terminal Manager told the claimant there was no work available in

Phoenix so long as he lived in New Mexico. New Mexico was not in the hiring area. The claimant had already sold his house. He told the employer that he was still moving. Continued work was available had the claimant not resigned by moving into a non-hiring area.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant voluntarily quit work 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(2) 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:

(2) The claimant moved to a different locality.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his actions. He told the employer he was moving to an area from which the employer did not have employees and quit work. When an employee quits work because he is moving to a different location, his leaving is without good cause attributable to the employer. The claimant left work because he was moving to a different locality. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's November 20, 2007 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,865.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw