

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON MULLIN

Claimant

APPEAL NO: 06A-UI-11607-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEI EQUIPMENT COMPANY INC

Employer

**OC: 11-05-06 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 28, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 19, 2006. The claimant participated in the hearing. Karen Gaddis, Corporate Officer; Hope Morrison, Human Resources Director; Richard Sams, Fabrication Supervisor; and Keith Robinson, Production Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

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 saw operator for CEI Equipment Company from October 9, 2006 to October 27, 2006. The employer's policy states that walking off the job without permission is job abandonment, two no-call no-shows is considered a voluntarily leaving of employment and if an employee is gone more than three days they must provide a doctor's note. On October 18, 2006, the claimant left for lunch and did not return. Fabrication Supervisor Richard Sams asked a co-worker what happened to the claimant and was told he hurt his leg the night before playing with his sons and had gone to see a doctor. Mr. Sams asked the claimant's step-brother, who is also an employee, if he knew what happened to the claimant and he did not know but did call the claimant on his break and again at the end of his shift and told him he needed to call his supervisor. The claimant called and left a message at 6:30 p.m. stating he went to a Cedar Rapids' emergency room and thought he could get back to work before the end of his lunch break but it took too long and he was unable to do so. He also stated that his doctor said he would be off work for nine days and on light duty for six days but he would be seeing a specialist October 20, 2006, and would have the doctor fax documentation of his injury to the employer. The claimant did not provide any documentation or contact the employer again until he went to pick up his check October 27, 2006. The employer

considered him to have voluntarily quit his job and conducted an exit interview which listed quitting as the reason for his leaving. The claimant did not argue that he had not quit or make any comments on the form. The claimant testified he went in October 19, 2006, and provided a doctor's note to Mr. Sams but was told he no longer had a job. He told Mr. Sams he needed time off and Mr. Sams stated he voluntarily quit and his employment was terminated. Mr. Sams denied having any conversation with the claimant between October 18 and October 27, 2006, and testified he would have sent the claimant to human resources if he met with him and terminated his employment October 19, 2006.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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.

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. While the claimant maintains he took a doctor's note to Mr. Sams October 19, 2006, Mr. Sams credibly denied that he did so and it is not reasonable to believe that Mr. Sams would have said he quit or discharged him and not have sent him to human resources or conducted an exit interview at that time. Because Mr. Sams' testimony is credible and the claimant did not dispute his separation being labeled a voluntary leaving at the time it occurred, the administrative law judge finds the claimant abandoned his job by failing to return from lunch or contact the employer to say he would not be back that day and then failing to call in or provide a doctor's note between October 18, 2006 and October 27, 2006. Consequently, the administrative law judge concludes the claimant voluntarily left his employment and has not demonstrated that his leaving was for good cause attributable to the employer. Therefore, benefits must be 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The November 28, 2006, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant is overpaid benefits in the amount of \$1,505.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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