

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUKE BELL
Claimant

APPEAL NO. 07A-UI-07347-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUTLER'S QUALITY PLUMBING INC
Employer

**OC: 07/01/07 R: 03
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated July 25, 2007, reference 01, which held claimant eligible for benefits based upon his separation from Butler's Quality Plumbing. After due notice, a telephone conference hearing was scheduled for and held on August 15, 2007. The claimant participated. The employer participated by Chad Butler, president, and Sara Butler, secretary/treasurer.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer as a plumber apprentice from March 2002 until June 27, 2007, when he quit employment in anticipation of a future layoff. Mr. Bell was employed on a full-time basis and was paid by the hour. His immediate supervisor was Chad Butler. On Monday, July 2, 2007, the claimant called to determine if the employer had work for him. Mr. Butler, company president, replied in the affirmative, indicating that the employer had work for the claimant that day. Mr. Butler further indicated that if the claimant desired to do so, the claimant could take vacation time. Mr. Bell made no direct response. The claimant, however, opened his claim for unemployment insurance benefits that day. Although work had been somewhat slow in recent weeks, Mr. Butler had indicated that the employer had a construction project that needed completing that week.

Due to somewhat slow business conditions in recent weeks, Mr. Bell had at times taken vacation time. The employer had endeavored to keep Mr. Bell employed, offering shop work when construction projects were not readily available. Although the claimant may have been eligible for partial unemployment insurance benefits based upon reduction of working hours for some weeks, it appears that the claimant had not filed a claim for partial unemployment benefits.

REASONING AND CONCLUSIONS OF LAW:

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 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

For the reasons stated herein, the administrative law judge concludes that the claimant chose to quit his employment with Butler's Quality Plumbing for reasons that were not attributable to the employer. Work continued to be available to Mr. Bell at the time that he chose to leave. The claimant had the option of continuing to accept employment with the company and/or claiming benefits for partial unemployment in any week in which the claimant worked less than full-time and earned less than his weekly benefit amount plus \$15.00.

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. The claimant is overpaid benefits in the amount of \$1,683.00.

DECISION:

The representative's decision dated July 25, 2007, reference 01, is hereby reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and 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 unemployment insurance benefits in the amount of \$1,683.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw