

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD B FARLEY
Claimant

APPEAL NO. 07A-UI-01712-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST TRANSIT INC
Employer

OC: 01-14-07 R: 04
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 7, 2007, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on March 6, 2007. The claimant did participate. The employer did participate through Tom Wittig, General Manager and Amber Orey, Operations Manager and was represented by Tammie Miyahata of ADP-UCS. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct or did he voluntarily quit his employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a operations manager full time beginning in May 15, 2002 through January 10, 2007, when he voluntarily quit his job.

The claimant was offered the general manager position. He accepted. The employer later learned that the claimant would not be approved for the position by the city of Davenport as was required. The claimant was notified that he would not be the general manager but would remain as the operations manager but his salary would be increased to fifty thousand dollars. The claimant agreed to the new terms, that is he would remain as the operations director but his pay would increase to fifty thousand dollars. The claimant believed that his pay increase would go into effect on January 1, 2007. When the claimant did not receive his pay raise on his January 15 pay stub he wrote to Dennis Jensen on January 9, 2007. The claimant asked if he had misunderstood when the raise was to go into effect and indicated that he had expected the raise on his January 15 paycheck stub. The claimant sent his e-mail at 6:28 a.m. The claimant left work without receiving a reply from Mr. Jensen. On January 9, 2007 at 3:58 p.m., Mr. Jensen wrote to the claimant and told him that his pay raise had to be approved by the corporate structure and that his raise would become effective on January 15, 2007, which he would receive in early February.

The claimant came into work on January 10 and without checking his e-mail dropped off his keys and other company property and told the employer he was quitting. When he was told that he would be given a raise there was no specific date set for it to go into effect. If the claimant had checked his e-mail he would have learned that the raise would have been in effect on his next paycheck. The claimant did not give the employer an opportunity to even respond to his e-mail before he quit. While the claimant may have been disappointed that he was not promoted or that his raise did not go into effect as early as he thought it should, there is no evidence to support a conclusion that he was promised the raise on the January 15 pay stub.

Claimant has received unemployment benefits since filing a claim with an effective date of January 14, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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(13) 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 § 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 § 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:

- (13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The claimant did not establish that his raise was promised to take effect on January 1, 2007. The claimant did not give the employer an opportunity to respond to his e-mail notice to even explain that the raise would go into effect for the next pay period before he quit. The claimant has not established good cause attributable to the employer for his quitting. Benefits are denied.

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

DECISION:

The February 7, 2007, reference 02, decision is reversed. 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. Claimant is overpaid benefits in the amount of \$2,520.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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