

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRENCE L WATTERS
Claimant

APPEAL NO. 11A-UI-11548-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

HIWAY TRUCK EQUIPMENT INC
Employer

OC: 08/07/11
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 30, 2011, reference 01, that concluded the claimant was eligible for benefits because he voluntarily left work for personal reasons for no more than ten days and returned to work but no work was available. An in-person hearing was held on October 31, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Kathy Forsythe participated in the hearing on behalf of the employer with a witness, Brian Forsythe.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a mechanic from September 10, 2007, to July 8, 2011. Brian and Kathy Forsythe own the business.

The claimant understood that he was required to notify the employer if he was not able to work as scheduled. On October 19, 2010, the employer had issued a final warning to the claimant telling him that he could not miss work without calling in.

The claimant was scheduled to work on July 11, 2011. He did not report to work or call in to notify the employer that he would not be at work. He continued to be absent from work without notice until early August.

On August 3, the claimant stopped by the business to pick up his final paycheck. Brian Forsythe told him he would have to return the next day because Kathy Forsythe, who prepares paychecks, was not in. The claimant explained that his wife had left him and he had gone to Montana to try to get her back. When Forsythe asked him about returning to work, the claimant said he did not think it was possible considering how he had left. Forsythe told him that they could discuss it the next day.

The claimant returned on August 4, to pick up his final check. Forsythe asked him if he could promise that the same thing wouldn't happen again. The claimant replied that he could not promise that, because of the situation with his wife. Forsythe then told the claimant his services were not needed.

The claimant filed for and received a total of \$3,600.00 in unemployment insurance benefits for the weeks between August 7 and October 29, 2011.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. The evidence is clear that the claimant voluntarily left employment to go after his wife, who had left him. He was gone without notice or permission. When he returned, he did not offer to return to work, because he believed that he did not have a job. He was just picking up his final check. Forsythe considered rehiring him but decided not to, because the claimant could not promise that the situation would not recur.

The agency representative relied on Iowa Code § 96.5-1-f to grant benefits in this case. The statute awards benefits to a person who leaves employment for no more than ten days for compelling personal reasons under certain conditions. The law requires that the person inform the employer of the compelling personal reasons before leaving and offer to return to work immediately afterwards, but find that no work was available.

This law does not apply to this case because the claimant did not inform the employer of the compelling personal reasons before he left and he left work for more than three weeks.

Even if the separation was deemed a discharge by the employer, the claimant would be disqualified due to excessive unexcused absenteeism based on his missing work for over three weeks without notifying the employer.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated August 30, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw