IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RYAN LEWIS
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DES MOINES IA 50310

KLINE ELECTRIC INC
PO BOX 199
ANKENY IA 50021-0199

Appeal Number: 06A-UI-00920-RT
OC: 01-01-06 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Kline Electric, Inc., filed a timely appeal from an unemployment insurance decision dated January 20, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Ryan Lewis. After due notice was issued, a telephone hearing was held on February 9, 2006, with the claimant participating. Shane Kline, Owner, and Scott Morrison, Manager, participated in the hearing for the employer. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer as a full-time journeyman electrician considered a commercial foreman from April 15, 2004 until he was separated from his employment on January 5, 2006. On that day, a confrontation developed between the claimant and the employer's witness, Shane Kline, Owner. The claimant called Mr. Kline that morning about a project he was working on. Mr. Kline had told the claimant numerous times how to do the project. However, the claimant was making some mistakes and called Mr. Kline to inquire about the project. Mr. Kline was upset with the claimant and the claimant was upset with Mr. Kline. Whether either used profanity directed at the other is uncertain. In any event, the claimant hung up on Mr. Kline. Mr. Kline then twice tried to call the claimant back on the claimant's cell phone, but the claimant did not answer. Mr. Kline then drove out to the worksite where the claimant was working. Mr. Kline then asked the claimant to go home for the day but did not tell the claimant that he was fired or discharged. Mr. Kline had been encountering attitude problems from the claimant and was concerned about the claimant's attitude. Something was said about the claimant's cell phone provided by the employer and the claimant tossed it to Mr. Kline, who caught it. As the claimant was leaving, Mr. Kline told the claimant you need to remember who you work for. The claimant then went to the employer's office to punch out. While there, he opened the door for the office of the manager, Scott Morrison, one of the employer's witnesses. The claimant then told Mr. Morrison that he could no longer work under "these conditions." The claimant did not use the word quit, nor did he indicate to Mr. Morrison that he was fired or discharged. The claimant did not explain what he meant by his comment. The claimant then left. Mr. Morrison immediately wrote down what the claimant said and then prepared a separation notice, as shown at Employer's Exhibit One.

The employer has policies as shown at Employer's Exhibit Two. Among these policies, a provision is made for sending an employee home if the employee is absent as a no-call/no-show. The policy also prohibits calls or complaints against an employee for foul language, inappropriate behavior, and so forth. The claimant had received approximately four verbal warnings or discussions about his ability to do the job and his attitude since the spring of 2005. None of these were written. Although the claimant had an attendance problem, he was not facing imminent discharge for attendance, nor was he discharged for attendance. Mr. Kline was going to confer with others to see what should be done about the claimant's attendance. Pursuant to his claim for unemployment insurance benefits filed effective January 1, 2006, the claimant has received unemployment insurance benefits in the amount of $972.00 as follows: $324.00 per week for three weeks from benefit week ending January 14, 2006 to benefit week ending January 28, 2006. For benefit week ending January 7, 2006, the claimant reported earnings sufficient to cancel benefits for that week.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.

2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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(21), (22), (28) 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:
>
> (21) The claimant left because of dissatisfaction with the work environment.
>
> (22) The claimant left because of a personality conflict with the supervisor.
>
> (28) The claimant left after being reprimanded.

The first issue to be resolved, and the crucial issue presented in this appeal, is the character of the separation. The claimant is adamant that he was discharged by Mr. Kline when Mr. Kline drove out to the work site on January 5, 2006, and sent him home for the day and asked for his cell phone. The employer's witness, Shane Kline, Owner, is equally adamant that the claimant voluntarily quit when he left the worksite on January 5, 2006, and then went to the office and informed the office that he was leaving and then left and never returned to the employer. Although it is a close question, the administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant voluntarily left his employment on January 5, 2006, and was not discharged.

On January 5, 2006, the claimant called Mr. Kline about a project that he was working on after Mr. Kline had told the claimant numerous times how to do the project. Both were upset at the other. The claimant testified that Mr. Kline used profanity at him but that he did not do so in return to Mr. Kline. Mr. Kline testified that the claimant used profanity at him but he did not do so in return to the claimant. There is not a preponderance of the evidence here that either party used profanity to the other. However, it is clear that both were upset. Further, it is uncontested that the claimant hung up on Mr. Kline. Mr. Kline attempted to call the claimant back twice, and when the claimant did not answer, Mr. Kline went out to the workplace. Mr. Kline was upset at the claimant because the claimant had asked questions about how to do a project when Mr. Kline had already told the claimant numerous times how to do it and because the claimant had hung up on him and because the claimant would not answer his cell phone calls.

When Mr. Kline arrived at the jobsite, he told the claimant to go home for the day. Mr. Kline did not say that the claimant was fired or discharged. Mr. Kline said something to the claimant about his cell phone and the claimant tossed it to Mr. Kline and Mr. Kline caught it. The claimant believed that he was discharged and got in his truck and began to leave. As he was

leaving, the claimant testified that Mr. Kline said you need to remember who you work for. The claimant testified that Mr. Kline used profanity, but Mr. Kline denied it. In any event, what is crucial here is that that statement indicates that Mr. Kline had not discharged the claimant but had merely sent him home for the day. According to the claimant's testimony, Mr. Kline said, you need to remember who you work for. The phrase "who you work for" implies that the claimant was never discharged.

The claimant then went to the employer's office and clocked out. He then spoke to the employer's other witness, Scott Morrison, Manager. Mr. Morrison's testimony is very credible. He testified that the claimant opened his door and told him that he was sorry he could no longer work under these conditions. Mr. Morrison was quite clear on this because he immediately wrote down what the claimant said and filled out a separation notice, as shown at Employer's Exhibit One, and wrote on the separation notice that the claimant said he could no longer work under these conditions. This certainly sounds like a quit and not a discharge. Mr. Morrison testified that the claimant did not use the word quit but also testified that the claimant did not tell him that he was fired or discharged. Mr. Kline testified that he told the claimant to go home so that he and the claimant could cool down and they could decide later what to do. Mr. Kline referred to some policies at Employer's Exhibit Two that provide for employees to be sent home. There is a provision that allows employees to be sent home upon the second occasion when that employee is absent as a no-call/no-show. There is no such provision for other kinds of behavior. However, the fact there is a provision that an employee can be sent home seems to confirm or support the testimony of Mr. Kline. This is a close question, but based upon the record and the testimony of the witnesses, and in particular the credible testimony of Mr. Morrison, the administrative law judge concludes that the claimant left his employment voluntarily or quit on January 5, 2006. The claimant did dispute and contest the testimony of Mr. Morrison, but, as noted above, the administrative law judge concludes that the testimony of Mr. Morrison was the most credible of the three witnesses. Even taking the claimant's testimony in its entirety as accurate, there is still a question as to whether the claimant was actually discharged. The claimant even conceded that when Mr. Kline told the claimant, as the claimant was leaving, you need to remember who you work for. The claimant should have at least inquired further as to whether he was discharged once tempers had settled. The claimant did not do so. The administrative law judge concludes that this failure supports the conclusion that the claimant actually quit.

The issue now becomes whether the claimant left his employment voluntarily or quit with good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The only reason for the claimant's quit was the confrontation with Mr. Kline. Leaving work voluntarily because of a personality conflict with the supervisor or because of dissatisfaction with the work environment or after being reprimanded is not good cause attributable to the employer. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on January 5, 2006, without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of $972.00 since separating from the employer herein on or about January 5, 2006, and filing for such benefits effective January 1, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 20, 2006, reference 01, is reversed. The claimant, Ryan Lewis, is not entitled to receive unemployment insurance benefits until, or unless, he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. He has been overpaid unemployment insurance benefits in the amount of $972.00.

pjs/kjw