

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

JODY G HEGWOOD
1329 S LINCOLN ST TRLR 82
KNOXVILLE IA 50138-3164

MAGIC MUFFLERS AND BRAKES
1301 E 36TH ST S
NEWTON IA 50208

Appeal Number: 06A-UI-08154-HT
OC: 07/16/06 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) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Magic Mufflers, filed an appeal from a decision dated August 4, 2006, reference 01. The decision allowed benefits to the claimant, Jody Hegwood. After due notice was issued, a hearing was held by telephone conference call on August 29, 2006. The claimant participated on his own behalf. The employer participated by Owner Barney Bushore, Bookkeeper Teri Butler and Manager Tony Gerdorn.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jody Hegwood was employed by Magic Mufflers from March 28, 2005 until June 20, 2006. He was the manager of the shop in Knoxville, Iowa.

The employer had not been happy with the claimant's performance. Mr. Hegwood had not been turning in the daily books every week as required. He was also absent a great deal, spending a lot of time at car races, in which he participated. The shop was not doing as well financially as it should have been and Mr. Bushore had counseled the claimant regarding these concerns.

On June 19, 2006, the claimant left the shop before closing time. He told Tony Gerdum, who was then a mechanic, he was leaving to go to the races and if Mr. Bushore called to tell him "whatever" because Mr. Hegwood was intending to give his two-week notice. Mr. Gerdum did tell the owner the claimant had left before the shop was closed. Mr. Bushore then came to the shop on June 20, 2006, to counsel the claimant again. He asked Mr. Hegwood what he intended to do to improve his work performance or to risk being fired. The claimant said he was giving his two-week notice at that time and the employer accepted it effective immediately.

Jody Hegwood has received unemployment benefits since filing a claim with an effective date of July 16, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant quit work for reasons which would disqualify him from receiving unemployment benefits.

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 quit his employment with Magic Mufflers because he did not "like the way things were going." However, he was the manager and it was his responsibility to see to the operation of the shop. His decision to quit was based on a reprimand from the employer about his poor work performance. Under the provisions of Iowa Administrative Code section 871 IAC 24.25(28) this does not constitute good cause attributable to the employer for quitting.

The claimant would have been entitled to benefits for the two-week period ending July 1, 2006, under the provisions of 871 IAC 24.25(38) as he was released prior to the end of his notice period, however, as he did not file for benefits until July 22, 2006, that time period had already lapsed.

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 claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 4, 2006, reference 01, is reversed. Jody Hegwood is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$2,160.00.

bgh/cs