

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

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Appeal Number: 04A-UI-01693-E
OC 01-18-04 R 02
Claimant: Respondent (4)

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, 2nd 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 Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a decision dated February 10, 2004, reference 01, that allowed benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 21, 2004. The claimant participated in the hearing. Todd Draper, Vice-President/Service Manager and Pat Knaack, President/Sales Manager, participated in the hearing on behalf of the employer with Attorney Randal Giannetto. Employer's Exhibit One was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony and examined the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time mechanic for Luethje Auto Sales from July 1, 1999 to January 7, 2004. On January 6, 2004, the claimant arrived at 9:30 a.m. for his 8:00 a.m. shift. The claimant had a history of tardiness and Vice-President/Service Manager Todd Draper questioned him regarding why he was late. The claimant stated he had to take his son to the emergency room the previous evening and consequently had been up late with him, which caused him to oversleep. He told Mr. Draper he "knew (he) was mad at (him)" and if the employer did not want him to work there any longer he would leave. Mr. Draper was sympathetic to the claimant's situation with his son and when the claimant asked for the day off to be with his son at the hospital Mr. Draper approved his absence and asked him to call and let the employer know how his son was doing. Later that day, the claimant's mother called the employer looking for the claimant and Mr. Draper said he was at the hospital with his son. The claimant's mother indicated his son was not in the hospital. On January 7, 2004, the claimant reported for work at 8:00 a.m. and Mr. Draper asked why he did not call and how his son was. The claimant did not answer. Mr. Draper told him that he did not "believe (his) story." The claimant stated if the employer did not want him there he would leave. Mr. Draper asked the claimant to tell him the truth and the claimant stated his son was not sick; he had just been out late the night before and overslept. Mr. Draper asked where he was after asking for the day off and the claimant said he was looking for another job. Mr. Draper asked if the claimant was giving his two-week notice, and when the claimant said "yes," Mr. Draper said his resignation would be effective immediately and the claimant could not remain for two-weeks.

The claimant has received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2. While the claimant maintains Mr. Draper told him to look for another job January 6, 2004, the employer's testimony on that issue was more credible than that of the claimant because although Mr. Draper was originally upset with the claimant for being late, he felt bad about confronting him regarding his tardiness after the claimant said his son was in the hospital. It is not reasonable to believe that Mr. Draper would then allow him the day off to be with his son and also tell him to seek other employment during the same

conversation. The claimant told Mr. Draper January 6 and 7, 2004, that he would leave if the employer no longer wanted him to work there and agreed he was giving his two-week notice after admitting he lied to Mr. Draper about his son and that he had been applying for other jobs January 6, 2004. The claimant testified the employer did not threaten to terminate his employment and it appears the employer was even lenient about his tardiness in recognition of the fact he had a small child to support. The claimant has not established that the employer discharged him from employment or that his voluntary leaving was for good cause attributable to the employer. Because the claimant did attempt to submit his two-week notice, but was not allowed to work during his notice period, he is allowed unemployment insurance benefits for the first two weeks he claimed benefits. Therefore, benefits are denied beginning the week ending February 7, 2004.

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.

DECISION:

The February 10, 2004, reference 01, decision is modified in favor of the appellant/employer. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are denied effective the week ending February 7, 2004, and 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. The claimant is overpaid benefits in the amount of \$1,608.00.

je/kjf