

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

DAVID W GILL
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SHADE TREE SERVICE CO
520 S HIGHWAY DR
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FENTON 63026-0708

Appeal Number: 05A-UI-00727-DT
OC: 12/12/04 R: 02
Claimant: Appellant (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, 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 Leaving/Requalification

STATEMENT OF THE CASE:

David W. Gill (claimant) appealed a representative's January 21, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Shade Tree Service Company (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on February 7, 2005. Prior to the hearing being held, the administrative law judge determined that no hearing was necessary and a decision was made on the record. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on May 24, 2004. He worked full time as a trimmer. His last day of work was September 29, 2004. He voluntarily quit effective that date. He subsequently began employment with another employer. By December 12, 2004, he had earned approximately \$9,000.00 in his new employment. The claimant established an unemployment insurance benefit year effective December 12, 2004. His weekly benefit amount was calculated to be \$266.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code Section 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.25 provides that, 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 claimant did express his intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code Section 96.6-2. The claimant has not satisfied his burden.

However, the administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer by earning ten times his weekly benefit amount in other employment. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The representative's January 21, 2005 decision (reference 01) is modified in favor of the appellant. The claimant voluntarily left his employment without good cause attributable to the employer, but has requalified for benefits since the separation. Benefits are allowed effective December 12, 2004, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

ld/b