

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

MICHAEL W AHRENS
402 – 12TH ST
DEWITT IA 52742

ARCHER-DANIELS-MIDLAND CO
C/O FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11624-SWT
OC: 09/26/04 R: 04
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 Quit
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 18, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 23, 2004. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Bryce Albrechtsen participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production operator from September 29, 2003, to September 22, 2004. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have voluntarily quit employment after three

days of absence without notice to the employer. The claimant was warned on August 9, 2004, after he was absent from work without notice on August 8. The claimant received a final written warning on September 17 after he was again absent from work on September 12.

The claimant was scheduled to work on September 25, 26, and 27, 2004. He was absent without notice on each of these days. On October 1, 2004, the claimant's supervisor sent the claimant a letter stating that the employer considered him to have resigned from employment due to his absence without notice for three consecutive workdays. The claimant never had any contact with the employer after September 22, 2004.

The claimant filed for and received a total of \$1,860.00 in unemployment insurance benefits for the weeks between September 26 and November 6, 2004.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

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(4) 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The evidence establishes that the claimant voluntarily quit employment by failing to return to work or contacting the employer after his last day of work on September 22, 2004. The evidence establishes that the claimant did not have good cause attributable to the employer to leave employment. Even if the separation from employment would be considered a discharge, it would be for misconduct since the claimant was absent from work without notice to the employer.

The next issue in this case is whether the claimant was overpaid unemployment insurance 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,860.00 in benefits for the weeks between September 26 and November 6, 2004.

DECISION:

The unemployment insurance decision dated October 18, 2004, 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 claimant was overpaid \$1,860.00 in unemployment insurance benefits, which must be repaid.

saw/tjc