

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

KEVIN J CONLAN  
154 – 34<sup>TH</sup> ST  
DES MOINES IA 50312

INNER FLORA INTERIOR FOLIAGE  
CONCEPTS INC  
PO BOX 6114  
DES MOINES IA 50309-6114

Appeal Number: 06A-UI-00730-R  
OC: 09/25/05 R: 02  
Claimant: Respondent (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer, Inner Flora Interior Foliage Concepts, Inc., filed a timely appeal from an unemployment insurance decision dated January 12, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Kevin J. Conlan. After due notice was issued, an in-person hearing was held in Des Moines, Iowa, on March 29, 2006, at the employer's request, with the claimant participating. Steven C. Codner, President, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibits One and Two and Claimant's Exhibits A and B were admitted into evidence. Claimant's Exhibit C, an audio tape, was not admitted into evidence. A hearing in

this matter was originally scheduled as a telephone hearing at 8:00 a.m. on February 6, 2006 and then rescheduled as an in-person hearing at the employer's request for March 7, 2006 at 11:00 a.m. and then rescheduled again at the employer's request.

#### 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 and Claimant's Exhibits A and B but not including Claimant's Exhibit C, the administrative law judge finds: The claimant was employed by the employer as a full-time plant technician from 1991, until he voluntarily quit on December 16, 2005. On that date he first left a cell phone message for the employer's witness, Steven C. Codner, President, that he was quitting. The claimant then submitted a resignation letter as shown at Claimant's Exhibit A. The claimant quit because he was not paid for approximately seven pay periods in 2003 for work that he had performed in that year. The total was approximately \$2,700.00. Thereafter in 2004 and continuing, the claimant was paid for his work but sometimes his payments were late. The claimant began expressing concerns about his 2003 pay to Mr. Codner in 2003 as well as to the bookkeeper including sending memos. In 2003, the claimant was told that the check was in a car or elsewhere and that big accounts were holding back payment and as soon as the big accounts were paid, the claimant would be paid. In 2004, the claimant was informed that the employer had Internal Revenue Service difficulties and that he would be paid later. In early 2005, the claimant was informed that an audit of 2003 would be required before he could be paid. In February of 2005 the claimant asked for a personal guarantee from Mr. Codner but Mr. Codner responded that it was not necessary. In the summer of 2005 the claimant was told that the employer was ready to pay him for the money owed to the claimant from 2003 but the employer's software would not allow a reissue of checks. In September of 2005 the claimant was told that he would be paid but when he received the checks they bounced or were not paid by the bank when deposited. Finally, on November 23, 2005, the claimant sent a memo to the employer as shown at Claimant's Exhibit B about his payments and the employer responded also as shown at Claimant's Exhibit B that new payroll checks would be reissued if requested by the claimant. However, the claimant was still not paid these monies so he called the employer's accountant and the accountant told the claimant to bring in certain information and he would look at it. The claimant took the information into the accountant that day. The accountant told the claimant that he could inform the claimant as to what the debt was but it was up to the claimant to get it collected. Apparently the accountant then informed Mr. Codner of the claimant's actions and Mr. Codner called and left a voicemail for the claimant, a transcript of which appears at Employer's Exhibit One. Upon receipt of this telephone message the claimant resigned or quit. A letter from the employer's accountant to Mr. Codner appears at Employer's Exhibit Two. The employer never disputed that it owed the claimant money for his 2003 pay but it delayed in paying the claimant because of various financial problems encountered by the employer unrelated to, and not the responsibility of, the claimant.

Pursuant to his claim for unemployment insurance benefits filed effective September 25, 2005 and reopened effective December 18, 2005, the claimant has received unemployment insurance benefits in the amount of \$2,544.00 since separating from the employer on or about December 16, 2005, as follows: \$212.00 per week for 12 weeks from benefit week ending December 24, 2005 to benefit week ending March 11, 2006.

#### 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 not.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not.

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 24.26(1) (2) (3) (4) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.
- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

The parties agree, and the administrative law judge concludes, that the claimant voluntarily left his employment on December 16, 2005. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he 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 met 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 significant facts here are not in dispute. In 2003, the claimant was working for the employer but was not paid for some of that work; approximately seven checks totaling approximately \$2,700.00. Both parties concede this. Further, the evidence is not in dispute that the claimant repeatedly made requests to the employer for the payment of that money but that it was not paid. The employer had significant financial difficulties and could not pay the claimant. The claimant made efforts to obtain payment for over two years without success. Finally, matters came to a head on December 16, 2005 when, after the claimant consulted the employer's accountant about being paid, the President, Steven C. Codner, left a telephone message for the claimant, a transcript of which appears at Employer's Exhibit One. That transcript speaks for itself. On the evidence here, the administrative law judge concludes that the employer's failure to pay the claimant after numerous and repeated efforts to obtain such payment, makes the claimant's working conditions intolerable and detrimental and perhaps unlawful and unsafe. Further, the administrative law judge concludes that the employer's failure to pay the claimant was a willful

breach of the claimant's contract of hire which breach was substantial involving remuneration. The administrative law judge understands that the employer may have been having financial difficulties but this was not the fault of the claimant and the claimant waited over two years for his payment. Surely the employer could have, in some fashion, paid the claimant. The employer's failure to do so establishes good cause for the claimant's quit. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily with good cause attributable to the employer and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

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 \$2,544.00 since separating from the employer herein on or about December 16, 2005 and reopening his claim for such benefits effective December 18, 2005. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

#### DECISION:

The representative's decision of January 12, 2006, reference 01, is affirmed. The claimant, Kevin J. Conlan, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he left his employment voluntarily with good cause attributable to the employer. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

cs/tjc