

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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JUNGE CHEVROLET PONTIAC LLC  
PO BOX 546  
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Appeal Number: 06A-UI-06684-BT  
OC: 05/21/06 R: 03  
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, 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 Quit  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Junge Chevrolet Pontiac LLC (employer) appealed an unemployment insurance decision dated June 23, 2006, reference 01, which held that Michael Elam (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 19, 2006. The claimant participated in the hearing. The employer participated through Tina Ries, Office Manager.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time parts manager from May 15, 2005 through May 24, 2006, when it was assumed he voluntarily quit his employment. On May 16, 2006, the claimant asked the manager if he could take vacation and the manager said that he did not care provided the claimant had someone else cover for him. The claimant said nothing else to the manager, did not request certain days off and did not indicate that he was going to be taking vacation. He left early that day and was a no-call/no-show on May 17, 18, 19, 22 and 23. He returned to work on May 24 not dressed in his usual work attire. He claims the person taking his place said he had been hired for that job. The claimant said nothing to the employer, turned in his keys and picked up his final check which was being prepared when he walked in the office.

The claimant filed a claim for unemployment insurance benefits effective June 23, 2006 and has received benefits after the separation from employment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code sections 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when he stopped calling and reporting to work after May 16, 2006. Although the manager did say he could take vacation, no specific information was discussed and/or approved. Even if an employee is not required to complete paperwork for a vacation, it would be extremely unusual for an employee to take vacation without specifying the length of vacation and the return date.

The claimant further demonstrated his intent to quit when he arrived at work on May 24, 2006 not dressed in his usual work attire, requested his paycheck and turned in his keys without speaking to the employer. He heard from a co-worker that the co-worker had been hired for his position but never bothered to question the employer as to why he no longer had a job. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984). The claimant contends he assumed he had been fired but admits he was never told he was discharged.

It is the claimant's burden to prove 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 that burden and benefits are denied.

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 unemployment insurance decision dated June 23, 2006, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has 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 \$2,104.00.

sda/cs