

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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CRESTON IA 50801

WELLMAN DYNAMICS CORP
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-03210-ET
OC: 04-24-05 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, 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
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a decision dated March 8, 2006, reference 07, that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 10, 2006. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Nichole Bierle, Human Resource Manager and Wade Geary, Supervisor, participated in the hearing on behalf of the employer.

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 core knockout employee for Wellman Dynamics from November 13, 2005 to February 13, 2006. The employer issued a written warning to the claimant February 1, 2006, stating if he missed another day of work during his probationary period he would be discharged. On February 13, 2006, the claimant called and left a message stating he felt his supervisor was harassing him about his attendance and wanted him to quit and another employee was making sexual innuendos about his girlfriend. He had not reported any problems with another employee to his supervisor or human resources and his supervisor testified he was a good worker and as a result they did not count all absences against him because they wanted him to stay. The claimant did not return to work after February 13, 2006.

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 dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). 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. The claimant left a message for the employer February 13, 2006, stating he felt pressured with regard to his attendance and was upset that another employee was making sexual innuendos about his girlfriend. While he may have felt pressure about his attendance that pressure is directly attributable to the fact the claimant's last absence February 13, 2006, put him over the allowed number of absences and therefore he knew his job was in jeopardy. Additionally, although an employee may have made inappropriate comments about the claimant's girlfriend, the claimant did not report any of the statements to his supervisor or human resources and thus did not give the employer an opportunity to correct the situation. Consequently, the administrative law judge concludes the claimant voluntarily left his job without good cause attributable to the employer. 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 March 8, 2006, reference 07, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are 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 \$2,106.00.

je/tjc