

**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**

**FRED HOAG
4303 CANARY DR
DUBUQUE IA 52001**

**FBG SERVICE CORPORATION
c/o HOWARD JOHNSON ASSOCIATES
PO BOX 6007
OMAHA NE 68106**

**Appeal Number: 05A-UI-08480-ET
OC: 02-13-05 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 Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 10, 2005, reference 06, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 27, 2005. The claimant participated in the hearing. Bill Redmon, Operations Manager and Alice Smolsky, Employer's Representative, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time lawn care employee for FBG Service Corporation last

assigned at John Deere from May 12, 2004 to July 18, 2005. The claimant had worked for another company at John Deere but was let go from that job and when he was hired by FBG Services the employer told him he should have little contact with other John Deere employees. On July 1, 2005, a female John Deere employee complained that the claimant had harassed her and John Deere asked that the claimant be removed from the assignment. The female employee called her boyfriend at a local restaurant where he was eating lunch and he made threats against the claimant. Two security guards were also present in the restaurant and called John Deere to warn them to get the claimant off the property before the female employee's boyfriend arrived and caused trouble. John Deere then called FBG and told it they wanted the claimant removed from the property. On July 5, 2005, the claimant called Operations Manager Bill Redmon and Mr. Redmon explained he had been removed from John Deere but FBG was looking for another position for him that would offer the same hours and wages. Mr. Redmon instructed to the claimant to call back on Wednesday or Thursday. The claimant asked if he was being terminated and Mr. Redmon said, "no" and explained they were still looking for a job with the same hours and wages. The claimant did not call Mr. Redmon Wednesday or Thursday. Mr. Redmon called the claimant July 8, 2005, and got his answering machine. Mr. Redmon had not heard from the claimant by July 18, 2005. Mr. Redmon had found another position for the claimant that was similar in hours and wages but was unable to reach the claimant and consequently determined he had voluntarily quit his job.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

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. In this case, the claimant was asked to leave John Deere because a female employee accused him of harassment. Regardless of whether those charges were true, the client has the right to ask that employee be removed. John Deere was one of FBG's biggest clients and FBG did not have much choice in accepting their demand that the claimant not return to John Deere. FBG was willing to look for another position for the claimant that would have provided the same hours and wages but, as it explained to the claimant, it might take a few days before it could do so. Mr. Redmon asked the claimant to call him July 6 or 7, 2005, to see if he was able to secure a position at that time and the claimant specifically asked Mr. Redmon if he was fired and was told, "No" he was not fired. The claimant did not call Mr. Redmon after that date. Mr. Redmon again tried to call the claimant around

July 8, 2005, and left a message but when it had not heard from the claimant by July 18, 2005, it determined he had voluntarily left his job. Under these circumstances, the administrative law judge must conclude the claimant voluntarily left his job without good and benefits must be 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 August 10, 2005, reference 06, 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 amount he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,350.00.

je/pjs