

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

DAVID A BRINGMANN
7363 – 13TH AVE
BELLE PLAINE IA 52208

DOWNTOWN TIRE CO INC
402 SECOND AVE SE
CEDAR RAPIDS IA 52401

Appeal Number: 04A-UI-09146-DT
OC: 07/25/04 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 Overpayment of Benefits

STATEMENT OF THE CASE:

Downtown Tire Company, Inc. (employer) appealed a representative's August 16, 2004 decision (reference 01) that concluded David A. Bringmann (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 16, 2004. The claimant participated in the hearing. Joshua Collingwood appeared on the employer's behalf and presented testimony from one other witness, Dan Smith. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on November 5, 2002. He worked full time as an automotive technician in the employer's automobile service business. His last day of work was July 27, 2004.

The claimant had been off work due to illness from late May until July 26, 2004. Prior to his departure on sick leave, the claimant had worked on some projects on which the employer found his work unsatisfactory. When the claimant came in on July 27, Mr. Collingwood, the manager, called him in to meet with him and Mr. Smith, the service manager. He told the claimant that due to his dissatisfaction with the claimant's work quality, he was going to switch the claimant to the oil change side of the business, where the claimant would do oil changes, tire changes, and tire service, rather than more complex mechanical repairs. The claimant assumed that this also meant that he would be demoted in salary from \$15.50 per hour to \$8.50 per hour, the wage paid to the other oil change technicians, and he responded by saying that he was not going to accept the change, got up, and left. However, Mr. Collingwood had intended to keep the claimant on at his same hours, wage, and benefits, but the claimant left before any of those details could be presented or discussed.

The claimant established a claim for unemployment insurance benefits effective July 25, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,254.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

871 IAC 24.25 provides that, 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 claimant did express his intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code Section 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not

good cause. 871 IAC 24.25(21), (23). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). An employer has the right to allocate personnel in accordance with its needs and resources; the claimant has not established that there was a substantial change in his terms of employment. 871 IAC 24.26(1). While the claimant's change in work duties was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the situation detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. 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 representative's August 16, 2004 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 27, 2004, benefits are withheld until such time as the claimant 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 \$2,254.00.

ld/s