Appeal Number: **04A-UI-11067-RT**
OC: 09-12-04   R: 03
Claimant: Appellant (5)

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.

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ALBIA IA 52531

DEARBORN ROOFING INC
D/B/A BECKER ROOFING CO
327 CHURCH ST
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_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Jackie D. Harding, filed a timely appeal from an unemployment insurance decision dated October 6, 2004, reference 01, denying unemployment insurance benefits to him because he voluntarily left his employment on April 8, 2004 without good cause attributable to the employer. After due notice was issued, a telephone hearing was held on November 4, 2004 with the claimant participating. Brenda Newton, office manager; Arlo Dearborn, vice president; and Carolyn Dearborn, president, participated in the hearing for the employer, Dearborn Roofing, Inc., doing business as Becker Roofing Company. This appeal was consolidated with appeal 04A-UI-11068-RT for the purposes of the hearing with the consent of the parties. The administrative law judge takes official notice of Iowa Workforce Development Department

unemployment insurance records for the claimant. Claimant's Exhibits A and B were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibits A and B, the administrative law judge finds: The claimant was employed off and on by the employer as a full-time seasonal laborer for several years. From May 6, 2004 to May 19, 2004, the claimant was absent without notifying the employer. Neither the employer nor the claimant knew why he was absent during that period of time. However, when the claimant came back to work, the employer accepted the claimant back and allowed him to continue working. The claimant did not apply for unemployment insurance benefits during this period of time.

The claimant was again absent from work from August 13, 2004 to August 20, 2004. For four days the claimant was in the hospital, from August 13, 2004 to August 16, 2004. Early in the absences, the claimant called and spoke to Arlo Dearborn, vice president and one of the employer's witnesses. He informed Mr. Dearborn that he was under a doctor's care. Mr. Dearborn said that was acceptable. The claimant then came to the office on August 20, 2004 to pick up his check but not to return to work. He provided the employer with a doctor's excuse, as shown at Claimant's Exhibit A, excusing the claimant from work from August 17, 2004 to August 19, 2004. At that time, the claimant was not told he was fired or discharged. However, the claimant never returned to work thereafter. The employer has a rule, although it is not in writing, that indicates that after three absences in a row, the employee must notify the employer and, if not, those three absences are considered a quit.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(4) provides:

> Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The administrative law judge concludes that the claimant effectively voluntarily quit on May 10, 2004 when he was absent without notifying the employer for three days and then continued to be absent without notifying the employer through May 19, 2004. The employer has a rule, although not written, that an employee who is absent for three days in a row must notify the employer of the reason or have it be considered a quit. Here, the evidence establishes that the claimant was absent from May 6, 2004 to May 19, 2004 without notifying the employer. By doing so, the administrative law judge concludes that the claimant voluntarily quit. However, when the claimant returned to work, he was accepted back to work. The claimant also did not apply for or receive any unemployment insurance benefits during this period of time. The claimant's testimony to the contrary is not credible. The claimant testified that he was not sure if he was absent that long but did seem to concede that he was absent for a period of time in May without notifying the employer and could not give a reason why. Accordingly, the administrative law judge concludes that the claimant voluntarily left his employment effective May 10, 2004. 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 has 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 failed to meet 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 claimant could provide no reasons why he failed to come to work during this period of time nor did he provide any reasons attributable to the employer for failing to come to work or for voluntarily quitting. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective May 10, 2004, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant beginning May 10, 2004, until or unless he requalifies for such benefits.

DECISION:

The representative's decision of October 6, 2004, reference 01, is modified. The claimant, Jackie D. Harding, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily effective May 10, 2004 without good cause attributable to the employer.

tjc/tjc