

**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**

**LARRY MCDONALD
8180 ASHWORTH RD
WEST DES MOINES IA 50266**

**THE WALDINGER CORPORATION
2601 BELL AVE
DES MOINES IA 50321-1120**

**THE WALDINGER GROUP
2601 BELL AVE
DES MOINES IA 50306**

**Appeal Number: 05O-UI-07561-HT
OC: 04/17/05 R: 02
Claimant: Appellant (1)**

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) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The claimant, Larry McDonald, filed an appeal from a decision dated May 10, 2005, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 10, 2005. The claimant participated on his own behalf. The employer, The Waldinger Corporation (Waldinger), participated by Human Resources Accountant Charity Nelson.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Larry McDonald was employed by Waldinger from November 3, 2003 until April 21, 2005. He was a full-time mechanical trainee.

Mr. McDonald sustained a work-related injury in 2004. He was released with restrictions by his doctor and the employer was able to find work for him from time to time. The last day he worked was February 25, 2005. After that date the employer would contact him from time to time when it had work available within his restrictions. Each time he declined, stating he was not able to work and then would return to the doctor to get new restrictions. The last doctor's statement was on April 8, 2005, which imposed restrictions of not lifting more than ten pounds and no repetitive bending.

On April 15, 2005, Supervisor Kurt Baker called the claimant. Human Resources Accountant Charity Nelson was present and listened to the conversation on a speaker phone. The claimant was told by Mr. Baker that work was available within his restrictions beginning April 18, 2005. He was given the location of the work site, the start time, and the name and phone number of the job foreman. The claimant said "okay."

Mr. McDonald was no-call/no-show to work on April 18, 19 and 20, 2005. On April 21, 2005, he was sent a certified letter stating he was considered a voluntary by being no-call/no-show to work for three days.

Larry McDonald has received unemployment benefits since filing a claim with an effective date of April 17, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant had been informed work was available to him within his restrictions, and given the work location, start time, and the name and phone number of the foreman. At no point did the claimant say that he would not be at work, nor did he call in and inform the employer he would be absent on the actual work days. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer, and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 10, 2005, reference 02, is affirmed. Larry McDonald is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$4,576.00.

bgh/kjw