

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

JEFFERY D RINEHART
825 MAPLE
PO BOX 74
MURRAY IA 50174

ORKIN EXTERMINATING COMPANY INC
c/o GATES MCDONALD
PO BOX 182366
COLUMBUS OH 43218-2366

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

Appeal Number: 05A-UI-02605-HT
OC: 02/06/05 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 – Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Orkin Exterminating Company, Inc., filed an appeal from a decision dated March 4, 2005, reference 01. The decision allowed benefits to the claimant, Jeffery Rinehart. After due notice was issued a hearing was held by telephone conference call on March 30, 2005. The claimant participated on his own behalf. The employer participated by Service Manager Steve Heisler.

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: Jeffery Rinehart was employed by Orkin from June 1998 until February 3, 2005. He was a full-time service technician.

On December 7, 2004, the claimant met with Service Manager Steve Heisler to discuss his frustration with his job. His work had been expanded because of an increase in the territory and there was too much driving. He notified Mr. Heisler he would quit if "things did not change," although he was not specific as to what things he wanted to change. A replacement was hired and trained.

The claimant acknowledged things "did not change" and a new technician was hired on or about February 1, 2005. Mr. Heisler notified him on February 3, 2005, that he would be picking up the company vehicle from the claimant's home, which he did later that day. Mr. Rinehart indicated he had "rescinded" his resignation, but at no time did he tell the employer he had changed his mind.

Jeffery Rinehart has received unemployment benefits since filing a claim with an effective date of February 6, 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.

When a claim gives notice of an intention to quit, and the employer accepts the resignation, that is a resignation. If an employee subsequently attempts to withdraw the resignation, the employer is not obliged to accept it. Langley v. EAB, 490 N.W.2d 300 (Iowa App. 1992). In the present case, the claimant apparently changed his mind but did not even make an attempt to tell the employer he now intended to stay. He felt by continuing to work that was indication enough he had changed his mind, but the employer believed the resignation was pending the hiring and training of a replacement. The record establishes the claimant quit because he did not like the work and the employer accepted the resignation. This is not 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 March 4, 2005, reference 01, is reversed. Jeffery Rinehart 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 \$1,860.00.

bgh/sc