

**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**

**CARL F MAYFIELD
2607 DEAN AVE APT #1
DAVENPORT IA 52802**

**RICH METALS INC
510 SCHMIDT RD
DAVENPORT IA 52802**

**Appeal Number: 04A-UI-08204-DT
OC: 07/11/04 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 Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Rich Metals, Inc. (employer) appealed a representative's July 27, 2004 decision (reference 01) that concluded Carl F. Mayfield (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2004. The claimant participated in the hearing. Armando Ortega appeared on the employer's behalf and presented testimony from one other witness, Clemmie Kirk. 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: Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 11, 2003. He worked full time as an outside yard laborer in the employer's scrap yard. His last day of work was May 18, 2004. The claimant had suffered an injury at home a few days prior, and on May 19, he reported that he was going to the doctor and would be off work for a while. On May 26, he reported that the doctor would have him off for at least another week. He was released to return to work on June 1. However, the claimant did not return to work because prior to that date, he had seen some of his coworkers who had told him that Mr. Kirk, the foreman, had said that the claimant would be discharged. The claimant never contacted the employer to verify whether he had been discharged. Mr. Kirk had not said that the claimant was fired, and both Mr. Kirk and Mr. Ortega, the Controller/Office Manager, indicated that as of the date of the hearing the claimant's job was still available to him.

The claimant established a claim for unemployment insurance benefits effective July 11, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,158.00.

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.

Where an individual mistakenly believes that he is discharged and discontinues reporting to work, but was never directly told he was discharged, the separation is considered a voluntary quit without good cause attributable to the employer.

Inasmuch as the employer had not told the claimant he was fired and the claimant failed to contact the employer to determine the status of his employment relationship with the employer, he acted in a manner such that the employer would reasonably believe he had resigned his position. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify the claimant. Iowa Code Section 96.6-2. The claimant has not satisfied that 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 July 27, 2004 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of June 1, 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 \$1,158.00.

ld/pjs