

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

GEORGE J RUMP
557 S MOORE ST
OTTUMWA IA 52501

LB PRODUCTS LLC
PO BOX 201
LIBERTYVILLE IA 52567

Appeal Number: 04A-UI-09356-BT
OC: 08/08/04 R: 03
Claimant: Appellant (4)

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 Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

George Rump (claimant) appealed an unemployment insurance decision dated August 27, 2004, reference 01, which held that he was eligible for unemployment insurance benefits for the two-week period when LB Products (employer) discharged him prior to his resignation date. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 22, 2004. The claimant participated in the hearing. The employer participated through owner Jeff Hammes.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time laborer from July 9, 2001 through August 9, 2004. He submitted a two-week notice on August 5, 2004 because he had another job with Rainbow Enterprises. He was later told that he did not have the other job and tried to rescind his resignation, but the employer accepted it and discharged him early.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment to accept employment elsewhere.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment. He was separated from that employment prior to starting with the new employer. Accordingly, as of August 28, 2004, benefits are allowed and the employer's account shall not be charged.

However, since the claimant was discharged prior to the effective date of his resignation, the issue of misconduct must be evaluated. When an individual is discharged prior to an effective date of resignation, benefits are allowed from the last day worked until the effective date of the resignation, unless the claimant was discharged for work-connected misconduct. The employer contends the claimant was discharged because he was not doing the work assigned.

871 IAC 24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation,

no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The claimant had no idea what the employer was talking about with this claim and the evidence in the hearing demonstrated it was only a communication error. Since the employer has failed to establish misconduct, the claimant is eligible for benefits for the two-week period ending August 21, 2004 and the employer is subject to charge.

DECISION:

The unemployment insurance decision dated August 27, 2004, reference 01, is modified in favor of the appellant. The claimant was discharged two weeks prior to the effective date of his resignation but misconduct has not been established. Benefits are allowed for the two-week period ending August 21, 2004, and the employer's account should be charged. Subsequent to that date, the claimant voluntarily left his employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account shall not be charged as of August 28, 2004.

sdb/kjf