

**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**

**Appeal Number: 04A-UI-01891-HT
OC: 01/18/04 R: 02
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.**

**JOEY H ALLEN
507 N 5TH ST
CLEAR LAKE IA 50428**

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.

**DELL OIL LTD
5166 NW 111TH DR
GRIMES IA 50111**

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, Dell Oil, filed an appeal from a decision dated February 16, 2004, reference 02. The decision allowed benefits to the claimant, Joey Allen. After due notice was issued a hearing was held by telephone conference call on March 11, 2004. The claimant participated on his own behalf. The employer participated by Director of Operations Tim Larson. Exhibit One was admitted into the record.

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: Joey Allen was employed by Dell Oil from August 19, 2001 until October 6, 2003. He was a full-time janitor.

On October 6, 2003, the claimant called Manager Jeremy Miller and said he was quitting and that the employer had "Dana and Jason to thank." The claimant did not make any other statement to the manager, but later alleged he had been threatened by Fuel Desk Attendant Jason Awl. However, Mr. Awl's statement was that the claimant was upset because he had seen a note another employee had left for Mr. Miller about him, and Mr. Awl had told him to "take his temper tantrum" outside as there were customers present. The claimant left without notice to anyone and called Mr. Miller later in the day to say he quit.

Joey Allen has received unemployment benefits since filing a claim with an effective date of January 18, 2004.

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.

The claimant quit his employment but has failed to establish he had good cause. He has alleged he was threatened by Mr. Awl, but his testimony was vague and inconsistent. It does not stand up to close scrutiny. At no time did Mr. Allen mention any threats against him until after he had filed his claim for unemployment benefits. He did not notify the manager of the threats, only said that the employer had "Dana and Jason to thank" for his quit. Since there were no allegations of Dana making threats against him, the administrative law judge considers he quit because he was angry that other employees had left a note for the manager regarding him. 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 February 16, 2004, reference 02, is reversed. Joey Allen 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 \$1,176.00.

bgh/kjf