

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

CHARLES S ETSCHIEDT  
3877 ASBURY RD  
DUBUQUE IA 52002

LUMBER SPECIALTIES LIMITED  
D/B/A LUMBER SPECIALTIES  
1700 BELTLINE RD E  
PO BOX 38  
DYERSVILLE IA 52040-0038

Appeal Number: 06A-UI-00248-RT  
OC: 12-04-05 R: 04  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Charles S. Etscheidt, filed a timely appeal from an unemployment insurance decision dated December 27, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on January 24, 2006, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the Notice of Appeal. Robert Lex, Plant Manager; Larry Block, Supervisor; and Carl Schoenhard, Junior, President; participated in the hearing for the employer, Lumber Specialties Limited, doing business as Lumber Specialties. Dale Thole, Assistant Supervisor, was available to testify for the employer but not called because his

testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. The administrative law judge called the employer and spoke to Sharon Lehman at 8:44 a.m. on January 24, 2005. Ms. Lehman informed the administrative law judge that one of the employer's witnesses, Mr. Schoenhard, had a family emergency and wanted to know if the hearing could be rescheduled. The administrative law judge informed Ms. Lehman that since the employer had three other witnesses that he did not want to reschedule the hearing but would go ahead and conduct the hearing. The administrative law judge did inform Ms. Lehman that if the testimony of Mr. Schoenhard was crucial for a decision in the matter that the administrative law judge could recess the hearing and reschedule the hearing for the testimony of Mr. Schoenhard. When the administrative law judge called the employer for the hearing, Mr. Schoenhard was available at another number and participated in the hearing.

#### 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: The claimant was employed by the employer, most recently as a full time table leader, from August 5, 1991 until he voluntarily quit effective December 8, 2005. The claimant quit because he was absent for four days in a row, December 5, 6, 7, and 8, 2005 in violation of the employer's policy. The employer has a policy that if someone is absent for three days in a row that those absences are considered a voluntary quit. This rule is in the employer's handbook, a copy of which the claimant received and for which he signed an acknowledgment.

On December 2, 2005, the claimant got into an oral argument with the third shift supervisor, Larry Block, one of the employer's witnesses. Mr. Block had told the claimant to perform some particular task and the claimant refused. Mr. Block was the claimant's supervisor and authorized to tell the claimant what jobs to perform. Mr. Block initially told the claimant that he was fired. However, the claimant continued to work and remained at work. Mr. Block then prepared a written warning for a failure to comply with instructions but the claimant failed to sign it. The written warning stated that if such behavior in failing to follow instructions continued in the future the claimant could be discharged. The written warning did not say that the claimant was discharged. After the claimant refused to sign the written warning he continued to perform his work and finished his shift and went home. The claimant was not scheduled on December 3 and 4, 2005. On December 5, 2005, the claimant called and spoke to Robert Lex, Plant Manager. The claimant explained what had happened on December 2, 2005. Mr. Lex specifically told the claimant to come to work that night. He explained to the claimant that he could not contact Mr. Block, who was on vacation, but told the claimant to come to work and Mr. Lex would look into the matter. The claimant said that he had been fired but Mr. Lex said no he had not been. Mr. Lex told the claimant to come to work but the claimant said he would not come to work because he had already filed for unemployment insurance benefits. On December 6 and 7, 2005, someone from the employer also spoke to the claimant and again told the claimant to come to work that he had not been fired. The claimant did not return to work. Finally, on December 8, 2005 when the claimant did not come to work for a fourth day, the claimant was informed that he was treated as a voluntary quit.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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(27), (28) provide:

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:

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

The employer's witness, Robert Lex, Plant Manager, credibly testified that the claimant was considered to have quit when he was absent for four days, December 5, 6, 7, and 8, 2005 after being told to come to work each of those days. The employer has a policy that provides that three consecutive days of absences is considered a voluntary quit when the absences are without good cause. This rule is in the employer's handbook, a copy of which the claimant received and for which he signed an acknowledgment. The claimant in his appeal concedes that he quit. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on December 8, 2005. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide evidence of reasons attributable to the employer for his quit. The evidence indicates that the claimant was given a written warning on December 2, 2005 which appears to have prompted his quit but leaving work voluntarily after being reprimanded is not good cause attributable to the employer. There is also evidence that the claimant was assigned a specific task which he refused but leaving work voluntarily rather than perform the assigned work as instructed is not good cause attributable to the employer. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

On December 2, 2005, when the claimant refused to do the work as assigned by Mr. Block, Mr. Block told the claimant that he was fired. However, the administrative law judge concludes

that the claimant really was not discharged or fired at that time. The claimant continued to work thereafter and completed his shift. This belies a discharge. Further, the evidence is absolutely clear that on December 5, 6, and 7, 2005, that the claimant was informed by someone at the employer that he was not discharged and that he should come to work. The claimant repeatedly refused to come to work. After the claimant was initially informed by Mr. Block that he was fired, Mr. Block then prepared and gave the claimant a written warning that said that if the claimant continued to fail to follow instructions in the future that he could be discharged but the written warning did not say that the claimant was specifically discharged. The administrative law judge concludes under the circumstances here that the claimant was not discharged and the claimant was fully aware that he was not discharged and further, the claimant had ample opportunities to return to work and chose not to do so. Under these circumstances, the administrative law judge is constrained to conclude that the claimant left his employment voluntarily. The claimant even concedes as much in his appeal.

DECISION:

The representative's decision of December 27, 2005, reference 01, is affirmed. The claimant, Charles S. Etscheidt, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

kkf/kjf