

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

AMENDED

Appeal Number: 04A-UI-02612-S2T
OC: 01/18/04 R: 02
Claimant: Respondent (2)

RONALD KIEFER
5705 SW 2ND ST
DES MOINES IA 50315

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.

PINKERTON'S INC
D/B/A CPP/PINKERTONS
C/O SHEAKLEY
P O BOX 42212
CINCINNATI OH 45242-2212

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.

KENT GUMMERT
3737 WESTOWN PKWY #2D
WEST DES MOINES IA 50266

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Pinkerton's (employer) appealed a representative's February 25, 2004 decision (reference 03) that concluded Ronald Kiefer (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2004. The claimant was represented by Kent Gummert, Attorney at Law, and participated personally. The employer was represented by Katie McCann, Hearings Representative, and participated by Shelsie Greenfield, Human Resources Manager. Donna Kiefer, the claimant's wife, observed the hearing.

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 hired on April 23, 2002, as a full-time security officer. The claimant did not appear for work or notify the employer of his absence on May 3, 2004. He appeared for work on May 4, 2004, but he was not scheduled for work. On May 5 and 6, 2004, the claimant did not appear for work or notify the employer of his absence. On May 6, 2003, the employer sent the claimant a letter stating the claimant should notify the employer by May 9, 2003, if he wished to continue working for the employer. On or about May 8, 2003, the claimant told the employer that he did not like his job or the hours. He did not return to work even though work was available.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes he did.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He stopped appearing for work. The claimant failed to provide any evidence of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. 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.

The claimant has received benefits in the amount of \$2,223.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's February 25, 2004 decision (reference 03) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has 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 \$2,223.00.

bas/d