

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

JERIMIA D NORMAN
316 E FILMORE
AFTON IA 50830

LOUDON ENTERPRISES INC
KNOTTY PINE RESTAURANT & LOUNGE
1751 – 12 MILE LAKE DR
AFTON IA 50830

Appeal Number: 05A-UI-01289-CT
OC: 12/19/04 R: 03
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 Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Loudon Enterprises, Inc. filed an appeal from a representative's decision dated January 27, 2005, reference 01, which held that no disqualification would be imposed regarding Jerimia Norman's separation from employment. After due notice was issued, a hearing was held by telephone on February 22, 2005. Mr. Norman participated personally. The employer participated by Dennis Loudon, Owner/Operator.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Norman was employed by Loudon Enterprises, Inc., from October 1, 2003 until November 26, 2004 as a part-time dishwasher. He was hired to work from five to ten hours each week as needed but, there was no guarantee of any minimum number of hours. In April of 2004, Mr. Norman accepted full-time employment with Bee Bee Concrete. He was not always available for his dishwashing job because his full-time job sometimes took him out of town. He voluntarily quit his employment with Loudon Enterprises, Inc. on November 26, 2004 even though the same number of hours continued to be available for him.

Mr. Norman has received a total of \$1,845.00 in job insurance benefits since filing his claim effective December 19, 2004. The benefits were not paid directly to him but were used to reduce a prior overpayment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Norman was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). He was hired to work part time with no guarantee of hours. Because there was no guarantee of hours, the fact that hours may have been reduced would not constitute good cause attributable to the employer for quitting. However, the employer had the same number of hours available as Mr. Norman had been working. For the above reasons, it is concluded that he did not have good cause attributable to the employer for quitting.

An individual who voluntarily quits part-time employment without good cause attributable to the employer may nevertheless qualify for job insurance benefits if there are sufficient other wage credits to establish a valid claim. See 871 IAC 24.27(96). Wage credits earned with the part-time employer that was quit may not be used on the claim until such time as the individual re-qualifies by earning ten times the weekly benefit amount in insured wages after the disqualifying separation. Mr. Norman has other wage credits in the base period of his claim. However, he only has other wages in one calendar quarter. Because he does not have the required earnings in at least two quarters of his base period, he is not eligible for job insurance benefits on his claim filed effective December 19, 2004.

For the reasons stated herein, the administrative law judge concludes that Mr. Norman was not entitled to the benefits that have been credited towards his prior overpayment. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 27, 2005, reference 01, is hereby reversed. Mr. Norman voluntarily quit his part-time employment with Loudon Enterprises, Inc. for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Norman has been overpaid \$1,845.00 in job insurance benefits.

cfc/kjf