

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

DOUGLAS THOMPSON  
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1<sup>ST</sup> INTERIORS INC  
PO BOX 328  
DES MOINES IA 50302

Appeal Number: 04A-UI-11473-ET  
OC: 10-03-04 R0: 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, 2<sup>nd</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 Leaving  
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a decision dated October 22, 2004, reference 01, that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 16, 2004. The claimant participated in the hearing. Julie Dunn, Manager; Jeff Dunn, Owner; and Marcy Titus, Receptionist, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having heard the testimony and examined the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time painter for 1st Interiors from March 3,

2004 to September 17, 2004. He was off work due to a work-related foot injury from May 5, 2004 to August 31, 2004, at which time he was released to return to light-duty work. The employer and workers' compensation caseworker attempted to contact the claimant several times to notify him it had light duty work available beginning August 31, 2004, but was unable to reach him until September 13, 2004. The claimant was scheduled to return September 14, 2004, but called and told the receptionist that his foot slipped off the clutch peddle in his car on his way to work and he reinjured his foot and would not be in. He testified he left a message with a salesperson before 8:00 a.m. September 15, 2004, but the employer did not receive a message. The employer has an answering machine so salespeople usually do not take calls from employees reporting an absence. The claimant did not call in September 16 or 17, 2004, and the employer determined he voluntarily quit his job by failing to call or show up for work September 15, 16 or 17, 2004. The claimant testified he tried to get in to see his doctor but could not get an appointment until September 21, 2004. He also testified he participated in a deposition involving a child custody case between the employer and his ex-wife on September 22, 2004, and the employer's attorney stated, "You know you are fired."

The claimant has received unemployment insurance benefits since his separation from this employer.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant was released to return to light duty work August 31, 2004, but although the employer and workers' compensation caseworker made repeated attempts to contact him, they were unable to reach him until September 13, 2004. While the claimant testified he reinjured his foot driving to work September 14, 2004, he did not provide a doctor's note to verify his injury. He also testified he called and spoke to a salesman September 15, 2004, but the employer did not receive a message and it was uncommon for a salesperson to answer the phone before 8:00 a.m. because the employer has an answering machine. The claimant did not call the employer to report his absences September 16 or 17, 2004, and it was not unreasonable under the circumstances for the employer to conclude he voluntarily quit his job. While the claimant argues he was notified of his termination during a deposition on another matter September 22, 2004, he testified he had a doctor's appointment for an examination of his foot September 21, 2004, but there is no evidence to indicate he contacted the employer following his appointment, which suggests the claimant did not intend to return to work, regardless of what the employer's attorney stated in the deposition. Consequently, the administrative law judge concludes the claimant voluntarily quit his job by failing to report to work or contact the employer after September 15, 2004. Therefore, 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 22, 2004, reference 01, decision is reversed. The claimant voluntarily left his employment without 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 benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,758.00.

je/kjf