

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

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Appeal Number: 04A-UI-00101-LT
OC 12-21-03 R 04
Claimant: Appellant (5)

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 Leaving/Layoff
Section 96.5-2-a – Discharge/Misconduct/Requalification
Section 871 IAC 24(28)(6-8) – Voluntary Quit Requalification
and Prior Adjudication

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the January 2, 2004, reference 02, decision that found the separation to have previously adjudicated and denied benefits. After due notice was issued, a hearing was held on January 28, 2004. Claimant did participate. Employer did participate through Stacy Humes.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time truck driver through December 17, 2003 when he was laid off due to a lack of seasonal work. He had been denied benefits because of a suspension on October 23, 2003. (December 3, 2003, reference 02 for the December 22, 2002 claim year) He returned to work in mid-November and worked until the seasonal layoff on December 17. Claimant earned \$2,050.49 in gross wages after the suspension until his layoff separation on December 17. His weekly benefit amount is \$217.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the decision at issue has not been adjudicated in a prior claim year as there has been a second separation period.

871 IAC 24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

The issue presented was not resolved in a prior claim year as the prior claim dealt with a suspension on October 23, 2003 and this separation involves a seasonal layoff on December 17, 2003.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

Since the suspension was disqualifying, claimant is required to earn ten times his weekly benefit amount (WBA) of \$217.00 or \$2,170.00 before he can requalify for benefits on the additional claim for benefits. The December 17, 2003 layoff is not disqualifying but claimant has not requalified since his October 23, 2003 separation since he has earned only \$2,050.49 in insured wages since that time. If claimant has insured wages earned elsewhere since

October 23, he should present evidence of those wages to the local Iowa Workforce Development office to establish requalification.

DECISION:

The January 2, 2004, reference 02, decision is modified with no change in effect. While the December 17, 2003 layoff is not disqualifying, claimant has not yet established requalification since the October 23, 2003 suspension disqualification. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

dml/kjf