

**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**

**FERID MESINOVIC
1807 W 7TH ST
WATERLOO IA 50702**

**BEEF PRODUCTS INC
891 TWO RIVERS DR
DAKOTA DUNES SD 57049-5150**

**Appeal Number: 04A-UI-07799-HT
OC: 06/13/04 R: 03
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, 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 – Quit

STATEMENT OF THE CASE:

The claimant, Ferid Mesinovic, filed an appeal from a decision dated July 14, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 12, 2004. The claimant participated on his own behalf and Nail Tabakovic acted as interpreter. The employer, Beef Products, Inc. (BPI), participated by Human Resources Manager Rick Wood, Human Resources Coordinator Maureen Goss, and Human Resources Benefits Supervisor Jennifer Staubbs.

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: Ferid Mesinovic was employed by BPI from November 28, 2000 until June 11, 2004. He was a full-time production worker. At the time he was hired, the claimant attended an orientation, which was translated into Bosnian, his native language, by an interpreter, who also read the employee handbook to him. One of the policies is that employees must work overtime when notified.

The claimant was told by a supervisor, the superintendent, and Human Resources Manager Rick Wood, that he would have to work overtime at the end of his shift on Friday, June 11, 2004. An interpreter was used on at least two of these occasions, including the final one with Mr. Wood. Mr. Mesinovic said he could not stay because he had to go home and take care of his children, though he did not indicate there was any emergency involved. The human resources manager told him, using an interpreter, that if he did not stay to work the overtime, he would be considered a voluntary quit. After this, the claimant left the office and the facility, and did not work the required overtime.

He did return on June 17, 2004, and had an exit interview with Human Resources Coordinator Maureen Goss, and an interpreter. He was notified to turn in his equipment and that he was considered a voluntary quit for failing to work the required overtime.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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(17) provides:

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:

(17) The claimant left because of lack of child care.

The claimant chose to quit rather than work the required overtime when instructed to do so. Mr. Mesinovic kept insisting there was no interpreter present when he was given the instructions to work the overtime, but the administrative law judge does not find this to be credible as Mr. Wood, at least, was able to specifically identify the interpreter who was present.

In addition, the interpreter present at the exit interview was also specifically identified, when the claimant was told he was considered a voluntary quit. Mr. Mesinovic also maintained the interpreters did not speak English, but at least one of those identified as participating in the process attended an English-speaking high school in the United States and was highly competent in interpreting between Bosnian and English.

The claimant's reasons for refusing to work the required overtime was lack of child care, but there was no emergency involved and the reasons why he did not have child care were never explained. He had been advised his refusal to work would be considered a voluntary quit and elected to leave. Lack of child care is not good cause attributable to the employer under the provisions of the above Administrative Code section. The claimant is disqualified.

DECISION:

The representative's decision of July 14, 2004, reference 01, is affirmed. Ferid Mesinovic is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf