

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

HENRY A LLANOS
APT 1902
100 – 1ST AVE NE
CEDAR RAPIDS IA 52401

SELECT COMFORT RETAIL CORP
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-11989-HT
OC: 10/23/05 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) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Select Comfort, filed an appeal from a decision dated November 9, 2005, reference 01. The decision allowed benefits to the claimant, Henry Llanos. After due notice was issued a hearing was held by telephone conference call on December 12, 2005. The claimant participated on his own behalf. The employer participated by Marketing Manager James Shaw and Senior Human Resources Manager Jean Kriesel.

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: Henry Llanos was employed by Select Comfort from November 30, 1999 until October 9, 2005. He was a full-time store manager.

From January through August 2005, the claimant's store had met the sales goal only half the time. Marketing Manager James Shaw talked to the claimant after every unsuccessful month and finally issued a written warning in August 2005 which notified the claimant he would be discharged if he did not meet his sales goal at the end of September.

On September 25, 2005, Mr. Shaw contacted the claimant about his sales. The employer discussed his options with him, indicating he could remain on until the end of the month to see whether the store would meet the goal or he could give a two-week notice immediately. Mr. Llanos elected to submit his resignation immediately.

Henry Llanos has received unemployment benefits since filing a claim with an effective date of October 23, 2005.

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.

The claimant quit because he believed he would not be able to make his sales goal as required. He still had one week left before any monetary determination could be made but rather than chance being discharged he decided to submit his resignation. While it was entirely possible, and perhaps likely, the claimant would have been fired if he did not meet his goal for September, no decision could possibly have been made until the month had ended. The claimant's decision to resign on September 25, 2005, was based solely on conjecture and his belief he would not meet goal. This does not constitute good cause attributable to the employer and the claimant is disqualified.

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 unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 9, 2005, reference 01, is reversed. Henry Llanos is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,944.00.

bgh/pjs