

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

DAVID A CHARLTON
4317 NEWLAND DR
CEDAR FALLS IA 50613

DOERFER ACQUISITION COMPANY
DOERFER ENGINEERING COMPANY
201 WASHINGTON ST
CEDAR FALLS IA 50613

Appeal Number: 04A-UI-02366-RT
OC: 01-25-04 R: 03
Claimant: Respondent (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 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Doerfer Acquisition Company, Doerfer Engineering Company, filed a timely appeal from an unemployment insurance decision dated February 25, 2004, reference 01, allowing unemployment insurance benefits to the claimant, David A. Charlton. After due notice was issued, a telephone hearing was held on March 23, 2004, with the claimant participating. The claimant's wife, Kim Charlton, testified for the claimant. Kathryn Nuss, Human Resources Manager; A. J. McKinney, Former Plant Superintendent; and Joe Meier, Plant Supervisor, participated in the hearing for the employer. Claimant's Exhibits A and B and Employer's Exhibits 1 and 2 were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

The claimant called the administrative law judge and left a message for the judge to call him. The administrative law judge called the claimant and spoke to him on March 11, 2004 at 12:13 p.m. The claimant initially requested a rescheduling of the hearing because he was back at work. However, the claimant decided to talk to his employer to see if he could take some time off for the hearing and decided not to reschedule the hearing. The hearing was not rescheduled and the claimant participated in the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibits A and B and Employer's Exhibits 1 and 2, the administrative law judge finds: The claimant was employed by the employer as a full-time machinist from January 14, 1974 until he voluntarily quit on January 26, 2004. On January 12, 2004, the claimant submitted a written letter of resignation as shown at Employer's Exhibit 1 indicating that he was going to quit effective January 26, 2004. The claimant quit because his continued employment would be a detriment to himself and because his working conditions were exacerbating his stress.

The claimant's last day of work was January 3, 2003 and he had been off on a medical leave since that time and under a doctor's care. The claimant was on medical leave for stress related problems partially related to his work. At the same time that the claimant was encountering difficulties at work he was also suffering from significant and serious personal problems, which caused significant and ongoing stress. The claimant was under a physician's care. The claimant's physicians stated that it would not be therapeutic for the claimant to return to his present job and further recommended that the claimant not return to his employment and was improving overall when he was not at work for the employer all as shown at Claimant's Exhibit B. During this time, the claimant was on behavior control medication as shown at Claimant's Exhibit A. The employer was at all material times hereto aware of the claimant's condition and his medications as shown at Claimant's Exhibit A and as conceded by the employer's witnesses.

During the claimant's employment, several different employees made certain kinds of physical threats to the claimant. The claimant expressed concerns about these threats to both Kurt Barfels, Plant Manager, and to Joe Meier, Plant Supervisor. Mr. Barfels offered to meet with the claimant and one of the subject employees but the claimant chose not to do so as shown at Employer's Exhibit 2. Mr. Meier talked to the claimant and another involved employee and felt that the situation was resolved but the claimant was still concerned about these threats. No threats were made to the claimant thereafter but the claimant shortly thereafter left work as noted above. The claimant was also subjected to continuous "pestering and bothering" by another co-worker when the claimant was doing close technical work including things like squeezing between the claimant and a bench. The claimant did express concerns to Mr. Barfels and A. J. McKinney, Former Plant Superintendent, and one of the employer's witnesses who talked to Mr. Harold but the behavior continued.

The claimant also encountered significant problems from his plant manager Kurt Barfels. Mr. Barfels would come to work smelling of alcohol. He would do things such as blowing kisses at the claimant, which further exacerbated the claimant's stress. Mr. Barfels thought that this behavior was funny but the claimant did not and asked Mr. Barfels to stop the behavior but he did not. The claimant expressed concerns to Mr. Meier about these matters but Mr. Meier did nothing because Mr. Barfels was the superior of Mr. Meier. The employer's wife also expressed

concerns to Craig Schmeizer, Vice President of Operations, but he had no response and did not solve the problem.

A retired employee would come to the employer's location and make sexual jokes to others. The claimant disapproved of this and the other employees would make fun of the claimant and harass him about these jokes. The claimant reported this behavior to Mr. McKinney and Mr. Barfels. Finally, the claimant called Mr. Schmeizer who did take care of that problem by banning retired employees from coming on the premises.

Both the claimant and the claimant's wife expressed concerns to various members of management of the employer on numerous occasions. The claimant at least hinted that he would have to quit if the conditions did not improve. The claimant's wife specifically informed Kurt Barfels that the claimant would have to quit if the conditions didn't improve. The conditions did not improve nor did the claimant's stress and the claimant's quit as noted above.

Pursuant to his claim for unemployment insurance benefits filed effective January 25, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,976.00 as follows: \$176.00 for benefit week ending January 31, 2004 (\$124.00 vacation pay) and \$300.00 per week for six weeks from benefit week ending February 7, 2004 to benefit week ending March 13, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not.

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 24.26(2), (3), (4), (6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The parties concede that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant credibly testified as to a number of significant problems he was having at work as set out in the Findings of Fact. The employer's witnesses did not really deny any of the problems that the claimant was encountering. The claimant expressed concerns to various members of management of the employer about these matters also as noted in the Findings of Fact and the employer's witnesses concede that the claimant did so. It is true that some of the behavior of the claimant's coworkers ceased, but this only occurred right before the claimant quit working. Some behaviors continued until the claimant quit working. The claimant had difficulties with the plant manager, Curt Barfels. The claimant testified that Mr. Barfels would come to work smelling of alcohol and appearing to be intoxicated and would do things to him such as blowing kisses which he thought was funny but would continue even after the claimant asked him to stop. Two of the employer's witnesses conceded that they smelled alcohol on Mr. Barfels. The claimant testified that he complained to Joe Meier, Plant Supervisor, and Mr. Meier agreed, but Mr. Meier did nothing because Mr. Barfels was his supervisor. Mr. Meier conceded that Mr. Barfels smelled of alcohol and the claimant complained about Mr. Barfels but did nothing. Even if Mr. Barfels was the superior of Mr. Meier, Mr. Meier could have gone above Mr. Barfels, and should have gone above Mr. Barfels, to complain about this behavior but he did not. The claimant's wife expressed concerns to the vice president of operations, but got no response and did not solve the problem. The claimant's testimony here is credible because of the confirmations, albeit reluctantly, from the employer's witnesses. The administrative law judge concludes that the sum total of the claimant's difficulties at work made the claimant's working conditions intolerable and detrimental and perhaps unsafe and unlawful. The claimant expressed concerns to various members of management about these matters, but without, in some cases, any avail and the claimant certainly implied that he would quit and his wife came out and informed the employer directly that he would quit if the situation did not improve. The situation did not improve and the claimant quit. The claimant was a 30-year employee and should have received better from the employer.

The administrative law judge further concludes that the claimant was compelled to leave his employment because of illnesses attributable in part to the stress of his employment. It is true that the claimant suffered stress and other mental difficulties because of factors in circumstances of a personal nature unrelated to the employer. However, the administrative law judge concludes that the claimant's factors and circumstances with his employment aggravated his stress and mental problems and it made it impossible for the claimant to continue in his employment. The claimant's physicians, at Claimant's Exhibit B recommend that the claimant not return to his place of employment and state that his employment would not be therapeutic. The claimant has presented competent evidence showing adequate health reasons to justify his termination, did inform the employer of the work related health problem because the evidence indicates that the employer was, at all material times hereto, aware of the claimant's health problems, and the claimant, and especially the claimant's wife, informed the employer that the claimant would have to quit unless the problem was corrected or reasonably accommodated. The problems were not corrected and the claimant quit.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily with good cause attributable to the employer and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,976.00 since separating from the employer herein on or about January 26, 2004 and filing for such benefits effective January 25, 2004. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision dated February 25, 2004, reference 01, is affirmed. The claimant, David A. Charlton, is entitled to receive unemployment insurance benefits provided he is otherwise eligible, because he left his employment voluntarily with good cause attributable to the employer. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of this separation from the employer herein.

kjf/b