

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

TIM A FERGUSON
1022 HIGH ST
KEOKUK IA 52632

KEOKUK CONTRACTORS INC
853 JOHNSON ST RD
KEOKUK IA 52632

Appeal Number: 04A-UI-06054-HT
OC: 01/25/04 R: 04
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, Keokuk Contractors, Inc., filed an appeal from a decision dated May 18, 2004, reference 01. The decision allowed benefits to the claimant, Tim Ferguson. After due notice was issued a hearing was held by telephone conference call on June 23, 2004. The claimant provided a telephone number of (319) 524-1882. That number was dialed at 2:00 p.m. and the only response was a message machine. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 2:12 p.m. the claimant had not responded to the message and did not participate in the hearing or

request a postponement of the hearing as required by the hearing notice. The employer participated by Owner Walt Baker and Safety Director Alan Sparrow.

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: Tim Ferguson was employed by Keokuk Contractors from April 14 until April 29, 2004. He was a full-time laborer.

On April 29, 2004, Mr. Ferguson talked to Owner Walt Baker and said he needed to leave early as he had an appointment for a job interview at a company in Illinois. Mr. Baker told him to go ahead, and if he had the opportunity for a full-time job, to take it; but there was work available if it did not work out. The claimant did not return to Keokuk Contractors after April 29, 2004.

Safety Director Alan Sparrow contacted Mr. Ferguson on May 27, 2004, to request him to return to work on June 1, 2004, but he declined because he had another interview scheduled that day. Mr. Sparrow also told the claimant work was available if he did not obtain this job, but again, he never contacted the employer.

Tim Ferguson has received unemployment benefits since filing a claim with an effective date of January 25, 2004.

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(3) provides:

- (3) The claimant left to seek other employment but did not secure employment.

The record establishes the claimant left his employment with Keokuk Contractors to seek other employment. It must be assumed he did not obtain employment at that time. Under the provisions of the above Administrative Code Section, this is not 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 May 18, 2004, reference 01, is reversed. Tim Ferguson 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 \$1,555.00.

bgh/b