

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

RICK F SWENSON  
6712 COLBY AVE  
WINDSOR HEIGHTS IA 50310

ALL STATE GUTTER INC  
PO BOX 118  
WAUKEE IA 50263

AMENDED

Appeal Number: 04A-UI-09422-B  
OC: 01/11/04 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

All State Gutter, Inc. (employer) appealed an unemployment insurance decision dated August 27, 2004, reference 01, which held that Rick Swenson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on September 29, 2004. The claimant participated in the hearing. The employer participated through owner Rick Ross and Deb Nixon, Office Manager.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time installer from March 15, 1999 through July 30, 2004. The employer issued a written policy handbook in June 2004 and one of those policies provided that two days of no-call/no-show were equivalent to a voluntary quit. The claimant signed an acknowledgment of the handbook and was aware of the rules, even though he did not necessarily agree with them. On July 28, 2004, the claimant received a verbal reprimand for being late to work. On July 29, 2004, it rained but the claimant was a no-call/no-show. On days with inclement weather, employees are required to contact the employer to see if there is work to be done. All other employees either called in or worked that day. The claimant was also a no-call/no-show on Friday, July 30, 2004. He was scheduled to take vacation on August 2, 2004 through August 8, 2004. The employer sent the claimant a letter indicating that according to policy, he was considered a voluntary quit.

The claimant returned to talk to the employer on August 9, 2004 but was told he needed to talk to Rick Ross, who was out of town. His personal items had been removed from the employer's vehicle and were sitting in the office. The employees who were using that truck did not want to be responsible for the claimant's personal items. It was believed Mr. Ross would return on Tuesday so the claimant returned the next day. Mr. Ross was not there and the claimant simply wanted to know if he had been terminated. The office manager told him he had been, which is also what the letter sent to him indicated but advised the claimant he needed to talk to the owner. The office manager specifically called the claimant that afternoon to let him know Mr. Ross could meet with him at 10:00 a.m. on August 11, 2004. The claimant never arrived for the meeting and did not return the phone calls made to him by Mr. Ross.

The claimant filed a claim for unemployment insurance benefits effective January 11, 2004 and has received benefits after the separation from employment in the amount of \$1,866.00.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant knew that two days of no-call/no-show were considered to be a voluntary quit under the employer's recently printed policies. He demonstrated his intent to quit when he failed to call in or report to work for two consecutive days. The claimant further established his determination to quit when he failed to meet with the employer on August 12, 2004 to discuss his employment.

It is his burden to prove that the voluntary quit was for a good reason that would not disqualify him. Iowa Code Section 96.6-2. The claimant expected to be treated better due to his longevity with the employer but he could not offer the same respect to the employer. He knew the employer's rules but apparently did not think they applied to him. He does not deny that he was a no-call/no-show for two days. The employer was willing to talk with the claimant about

the situation and the claimant could have preserved his job, but his anger got in the way. The claimant's separation was without good cause attributable to the employer. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated August 27, 2004, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,866.00.

sdb/kjf/b