

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DANIEL ORTEGA

Claimant

APPEAL NO. 07A-UI-00568-ET

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

SILVER LINE BUILDING PRODUCTS LLC

Employer

**OC: 11-26-06 R: 01
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer appealed from the December 26, 2006, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 30, 2007. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Sandy Gainey, Human Resources Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the employer's appeal is timely and whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision allowing benefits was mailed to the employer's last-known address of record on December 26, 2006. The employer's North Carolina Corporate headquarters received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 5, 2007. The appeal was not filed until January 16, 2007, which is after the date noticed on the disqualification decision. The reason the employer filed the appeal late is because the North Carolina Corporate headquarters received it after the due date and sent it by overnight mail to the New Jersey facility where the claimant was employed. The New Jersey office faxed the appeal the day it received it. Consequently, the administrative law judge finds the employer's appeal is timely.

The claimant was employed as a full-time extrusion department operator for Silver Line Building Products from November 1, 2006 to December 8, 2006. He asked for the first week of December 2006 off work to visit family in Iowa because the plant was closed November 29 and 30, 2006, and the employer granted his request. He was expected to return December 6, 2006,

but never returned to work and after three days the employer considered him to have voluntarily left his position. The claimant later called the human resources department and said he had relocated to Iowa and his check should be forwarded to his new address. The employer had continuing work available.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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(2), (4) 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:

(2) The claimant moved to a different locality.

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Inasmuch as the claimant moved to Iowa and failed to report for work or notify the employer in North Carolina for three consecutive workdays in violation of the employer's policy, he is considered to have voluntarily left his employment 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 December 26, 2006, reference 02, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and 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 \$2,880.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw/css