

**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**

**JAMY L MEDBOURN
406 E 18TH ST
SO SIOUX CITY NE 68776**

**COREY ABC ASSOCIATES INC
3713 GORDON DR
SIOUX CITY IA 51106**

**RICHARD STURGEON
PO BOX 3372
SIOUX CITY IA 51102-3372**

**Appeal Number: 05A-UI-04764-AT
OC: 04-03-05 R: 01
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 – Voluntary Quit
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Corey ABC Associates, Inc. filed a timely appeal from an unemployment insurance decision dated April 27, 2005, reference 02, which allowed benefits to Jamy L. Medbourn. After due notice was issued, a telephone hearing was held in Sioux City, Iowa on July 12, 2005. Mr. Medbourn participated and was represented by Richard Sturgeon. Exhibit A was admitted into evidence on his behalf. Owner Nick Corey, Welder Bill Bubbs and Bookkeeper Craig Holden all participated for the employer. The administrative law judge takes official notice of Agency benefit payment records.

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: Jamy L. Medbourn was employed as a fabricator by Corey ABC Associates, Inc. from February 2004 until approximately March 17, 2005. Mr. Medbourn worked on a project involving the development of machinery to burn old tires to create an energy source. Mr. Medbourn's stepfather and another individual were the inventors of the machine and were consultants to the employer. A dispute arose between owner Nick Corey and the two inventors. Mr. Corey advised Mr. Medbourn and co-worker Bill Bubb that the inventors were no longer welcome on the premises. Mr. Corey also presented a confidentiality agreement to each of the individuals. By signing the agreement, the individuals would promise not to discuss sensitive company matters with anyone outside the company. Mr. Medbourn was reluctant to sign the agreement because of his relationship with his stepfather. Mr. Corey stated, however, that signing the confidentiality agreement was a condition of continued employment. Mr. Medbourn left work at noon on March 17, 2005, ostensibly to take the agreement to his attorney for review. He did not return to work. At approximately the same time, Mr. Corey instructed Mr. Bubb to change the locks on the facility, to keep one key and to take all other keys to Mr. Corey. His purpose in doing so was to make it unnecessary for Mr. Medbourn to be in the middle of the dispute between Mr. Corey and Mr. Medbourn's stepfather. It was not to prevent Mr. Medbourn from returning. Mr. Medbourn has received unemployment insurance benefits since filing a claim effective April 3, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Medbourn's separation from employment was a disqualifying event. It was.

The first step in analyzing this case is to characterize the separation. Mr. Medbourn never said that he was resigning. Mr. Corey never said that Mr. Medbourn was discharged. The administrative law judge must characterize the separation from the actions rather than the words of the parties.

The evidence persuades the administrative law judge that Mr. Corey gave Mr. Medbourn the option of signing the document and remaining employed or refusing to sign the document and becoming unemployed. Mr. Medbourn chose not to sign and chose not to return to work. A separation under these circumstances is better characterized a voluntary quit.

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 question then becomes whether Mr. Medbourn had good cause attributable to the employer to resign. Mr. Medbourn has the burden of proof. See Iowa Code section 96.6-2. It appears from the evidence that Mr. Medbourn valued loyalty to his stepfather over loyalty to his employer. The administrative law judge thus concludes that Mr. Medbourn left for good personal cause, but not good cause attributable to the employer. In reaching this conclusion, the administrative law judge notes that the confidentiality agreement did not overtly harm Mr. Medbourn's relationship with his stepfather or impose any direct hardship on his stepfather.

The dispute between the stepfather was properly with Mr. Corey and the other owners of ABC Associates. Benefits must be withheld.

It is also possible to characterize the separation as a discharge. Doing so, the administrative law judge reaches the same conclusion. Mr. Corey gave a direct order to Mr. Medbourn. Mr. Medbourn chose not to comply with the order. The administrative law judge finds that the employer was more reasonable in the order than Mr. Medbourn was in his refusal. The administrative law judge finds no evidence that Mr. Medbourn's loyalty to his stepfather was unduly compromised by fulfilling his duty of loyalty to his employer by signing the confidentiality agreement.

Mr. Medbourn has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated April 27, 2005, reference 02, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$4,160.00.

sc/kjw