

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

ERIC B DOBRASKA
32736 – 245TH ST
ELDORA IA 50627

MID-STATES MILLWRIGHT & BUILDERS
1116 S 'B' AVE
PO BOX 404
NEVADA IA 50201-0404

Appeal Number: 04A-UI-00891-DWT
OC 12/28/03 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, 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 are 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 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Mid-States Millwright & Builders, Inc. (employer) appealed a representative's January 26, 2004 decision (reference 01) that concluded Eric B. Dobraska (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had voluntarily quit his employment for reasons that qualified him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 17, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Kevin Vier, the president, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 6, 2003. He worked as a full-time laborer. The last day the claimant worked was December 11, 2003.

The employer gives employees per diem for motel and food when employees work out of town. The employer expects employees to use the per diem and not pocket the per diem by using a company vehicle to go back home to spend the night. On December 12, 2003, the claimant asked to meet with Vier. During the December 12 meeting, the claimant reported concerns he had about how employees were using per diem.

Vier thanked the claimant for his honesty and indicated he would see him on Monday, the next workday. The claimant did not call or report to work after December 12, 2003. The employer later learned the claimant may not have returned to work because the claimant thought co-workers wrote the word, snitch, on the window of his personal vehicle at his residence. The employer had no knowledge the claimant had problems working with any of the other employees.

The claimant established a claim for unemployment insurance benefits during the week of December 28, 2003. The claimant filed claims for the weeks ending January 3 through February 14, 2004. He received his maximum weekly benefit amount of \$339.00 during each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The claimant voluntarily quit his employment by abandoning it when he failed to return to work or contact the employer after December 12, 2003.

When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2. The claimant may have had compelling personal reasons for quitting. The evidence does not, however, indicate he quit for reasons that qualify him to receive unemployment insurance benefits. As of December 28, 2003, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 3 through February 14, 2004. The claimant has been overpaid a total of \$2,373.00 in unemployment insurance benefits.

DECISION:

The representative's January 26, 2004 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 28, 2003. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 3 through February 14, 2004. The claimant has been overpaid \$2,373.00 in unemployment insurance benefits.

dlw/b