

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF LUMBERG

Claimant

APPEAL NO: 06A-UI-11787-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINEGARD COMPANY

Employer

**OC: 11/05/06 R: 04
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Winegard Company (employer) appealed an unemployment insurance decision dated November 30, 2006, reference 01, which held that Jeff Lumberg (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 21, 2006. The claimant participated in the hearing. The employer participated through Danny Brauns, Warehouse Operations Manager and Marcie Schneider. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

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 dock hand from August 26, 2005 through September 15, 2006 when he voluntarily quit. He quit because his supervisor yelled at him and gave him demeaning jobs since the beginning of September 2006. She had been his supervisor since June 2006 and he only worked September 1, 5, 6 and 7. The claimant called in after that until he gave notice that he quit.

The claimant filed a claim for unemployment insurance benefits effective November 5, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by telling the employer he quit on September 15, 2006. He quit because his supervisor yelled at him and gave him demeaning jobs. The claimant's testimony indicates this occurred for approximately two weeks from the beginning of September 2006. However, he only worked four days in September 2006 and called in the next five before he finally quit. He had the same supervisor since June 2006 and if there were no problems before that time, it seems that it was something that could have been worked out if the claimant really liked his job as he claimed. The claimant never mentioned any complaints to the employer before or after he quit his employment.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

Iowa Code § 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 November 30, 2006, 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 \$1,095.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css