

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

ANTHONY P PICKART
901 – 2ND ST
PO BOX 136
PALO IA 52324

SOUND INTEGRATION INC
250 – 12TH AVE STE 290
CORALVILLE IA 52241-2911

Appeal Number: 06A-UI-00308-S2T
OC: 12/11/05 R: 03
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 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Sound Integration (employer) appealed a representative's January 5, 2006 decision (reference 01) that concluded Anthony Pickart (claimant) voluntarily quit due to a change in the contract for hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 25, 2006. The claimant participated personally. The employer participated by Paul Ross, Owner.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant worked for the employer as an installer from October 12, 2004, until December 9,

2005. At the time the claimant was hired, he traveled 25 minutes to the job site in Cedar Rapids and started his work at 9:00 a.m. Three or four times per week the claimant worked out of the Iowa City location. Iowa City was a one-hour drive from the claimant's residence. The claimant could drive to Iowa City in the employer's vehicle. In the fall of the year 2005, the claimant asked to start work at 9:30 a.m., so he could transport his son to school. The employer granted the claimant's request.

At about that same time, the employer was informing employees that the operation in Cedar Rapids would be closing and the workers could work from Iowa City. Starting in December 2005, the claimant began working out of Iowa City. He complained about the driving to the employer. The claimant had to drive to Iowa City in his own vehicle. The employer was working on a resolution to the problem. The employer thought about offering cost of gas reimbursement or pay employees an hourly rate for their time on the road.

On December 9, 2005, the claimant left work without warning. The employer discovered the claimant's absence on December 12, 2005. The claimant returned the employer's call later that day and said he quit. At the appeal hearing the claimant indicated he quit because he did not like the drive and he did not like the changed start time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes he did not.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

An employee must give prior notice to the employer before quitting due to a change in the contract of hire. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). In order to show good cause for leaving employment based on a change in the contract for hire, an employee is required to take the reasonable step of informing the employer about the change that the employee believes are substantial and that he intends to quit employment unless the conditions are corrected. The employer must be allowed a chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant informed the employer of the problem with the traveling but not the issues with the start time. The claimant did not notify the employer that he intended to quit if the changes were not addressed. Due to the claimant's failure to give the employer notice, there cannot be a finding that he left work with good cause attributable to the employer and, therefore, the claimant is not eligible to receive unemployment insurance benefits.

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.

The claimant has received benefits in the amount of \$972.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's January 5, 2006 decision (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 \$972.00.

bas/kjw