

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

GUY V COUNTERMAN
517 EAGLE DR
DAKOTA CITY NE 68731

COREY'S ABC ASSOCIATES INC
ALLIED PROPERTY MANAGEMENT
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Appeal Number: 05A-UI-00256-CT
OC: 10/03/04 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 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Corey's ABC Associates, Inc. (Corey's) filed an appeal from a representative's decision dated December 27, 2004, reference 01, which held that no disqualification would be imposed regarding Guy Counterman's separation from employment. After due notice was issued, a hearing was commenced by telephone on January 25, 2005. The hearing was recessed and concluded on January 28, 2005. Mr. Counterman participated personally and offered additional testimony from Valerie Counterman. Mr. Counterman was represented by Hughes Anderson Bagley, Jr., Paralegal. The employer participated by Nicholas Corey, Owner; Greg Holden, Bookkeeper/Personnel; and William Barber, Investigator with Intra-Lex Investigations. The employer was represented by Rebecca Nelson, Attorney at Law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Counterman performed services for Corey's as an independent contractor beginning in June 2002. He worked as an employee from February 2003 until October 1, 2004. He worked primarily in construction but also did landscaping and yard work as assigned. His wife, Valerie Counterman, also worked for the employer during the same time frames performing essentially the same duties. The Countermans did not always work at the same job site.

On July 16, 2004, Mrs. Counterman was at a job site when she was accosted by the driver for Standard Cement. The driver grabbed Mrs. Counterman's breast. She contacted the local sheriff to report the assault. Someone from the job site apparently reported the incident to Mr. Corey because he called the Countermans that evening to ask about the incident. The following morning, Jim Murphy, Foreman, asked Mrs. Counterman if she had had anyone arrested yet. On another occasion, when the cement truck returned, Mr. Murphy commented to Mrs. Counterman that they were "coming for her other tit." Mrs. Counterman did not have any trouble telling Mr. Murphy to go "fuck himself" if he said anything she did not like. She also participated in telling jokes or making comments of a sexual nature while on the job. Mr. Corey did not hear anything further on the matter until he received a complaint filed by Mrs. Counterman with the Sioux City Human Rights Commission (HRC) on or about September 15, 2004. On September 17, the employer gave a statement of policy to all employees advising that harassment would not be tolerated at the workplace.

On September 29, 2004, Mrs. Counterman and her husband met with Mr. Corey at the HRC offices to discuss conciliation of the complaint. Personnel at HRC were under the impression that an agreement had been reached between the parties during the conciliation meeting. After the terms of the agreement had been finalized, Mr. Corey made a statement to the effect that, after the agreement was signed, the Countermans would not be able to be employed by him if they did not drop the charges. The HRC personnel advised him that such statements could be construed as retaliation for having filed a complaint. At the conclusion of the meeting, HRC was to put the terms reached by the parties into a written agreement for the parties to sign. Both Countermans worked on September 30 and October 1.

Prior to the HRC meeting on September 29, the Countermans had started receiving letters threatening Mrs. Counterman's life and safety. Law enforcement could not determine the source of the letters. The Countermans felt Mr. Murphy had been sending them but had no proof of this fact. The last such letter was received after they were separated from the employment.

Mr. Corey learned on October 1 that Mrs. Counterman did not intend to sign the conciliation agreement. Therefore, he and Greg Holden went to the Counterman's home that evening to discuss the matter. At that time, the Countermans indicated that they did not feel safe and did not want to work around Mr. Murphy. Mr. Corey then assigned them other work for the following week. Their job assignments were to be at separate sites. He was not going to have them return to the home they had been working on because a crew which might have included Mr. Murphy would be there. Neither Counterman indicated that they would not be at work on Monday, October 4. They did not report for work or contact the employer concerning their intentions. It was not until October 8 that they notified the employer that they were quitting. The reasons given for the quit was the fact that Mrs. Counterman felt she had been retaliated

against and because she did not feel safe at the job site. Mr. Counterman quit, not because he felt retaliated against or unsafe at work, but in support of his wife.

Mr. Counterman has received a total of \$5,270.00 in job insurance benefits since filing his claim effective October 3, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Counterman was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). It appears that Mr. Counterman did not, himself, have any problems with the employment except how it effected his wife. The administrative law judge assumes for purposes of this decision that Mr. Counterman would be justified in quitting if his coworker wife was being retaliated against and physically threatened at work. However, the evidence of record does not establish any retaliation on the part of the employer. Nor does it establish that anyone employed by or associated with Corey's was threatening Mrs. Counterman.

The issue of retaliation first arose during the meeting with HRC. Mr. Corey is alleged to have told the Countermans that they would not have jobs if they did not drop the charges after the conciliation agreement was signed. A conciliation agreement would, in effect, short-circuit the HRC process as it would mean that the parties had reached a mutually agreeable resolution of the complaint. If an agreement was reached, there would be no charges to pursue, and, therefore they would, as a practical matter, be dropped. The fact remains, however, that Mr. Corey still made work available to the Countermans even after learning that they did not intend to drop the charges. He assigned them work they had done for him in the past. Although they would not have been working together at the same site on October 4, they had not always worked at the same job site while employed by Corey's. The evidence failed to establish any acts of retaliation by Corey's either because of the filing of the complaint or because of the failure to drop it.

The Countermans are certain that someone associated with Corey's, most likely Mr. Murphy, was sending the threatening letters. However, the letters could just as easily have come from the cement truck driver, considering the fact that Mrs. Counterman reported his conduct to the local sheriff. The cement truck driver was not within the control of Corey's. At any rate, there is no evidence that the letters originated with anyone working for Corey's. There was no evidence of any face-to-face threats while Mrs. Counterman was at work. In fact, there do not appear to have been any problems with Mr. Murphy after the complaint was filed and the employer provided written notice to employees that harassment would not be tolerated. Because she felt Mr. Murphy was behind the threatening letters, Mrs. Counterman did not want to work with him. However, the work she would have been doing as of October 4 was not directly with Mr. Murphy.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Mr. Counterman has failed to establish that he had good cause attributable to the employer for quitting. Accordingly, benefits are denied. Mr. Counterman has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated December 27, 2004, reference 01, is hereby reversed. Mr. Counterman voluntarily quit his employment with Corey's for no 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Counterman has been overpaid \$5,270.00 in job insurance benefits.

cfc/b