

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

JERRY MERRITT
PO BOX 391
CENTER POINT IA 52213-0391

NORTH LINN FORD INC
JUNGE CENTER POINT
PO BOX 339
CENTER POINT IA 52213

Appeal Number: 06A-UI-05996-BT
OC: 05/07/06 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:

Junge Center Point (employer) appealed an unemployment insurance decision dated May 31, 2006, reference 01, which held that Jerry Merritt (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 June 28, 2006. The claimant participated in the hearing. The employer participated through owner Gary Junge.

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 salesperson from March 1, 2001 through May 4, 2006, when he voluntarily quit his employment. On May 2, 2006, the claimant argued with the general manager about work assigned to him. The claimant told the manager if he did not want him there he could just fire him and the manager said he would, he would fire him tomorrow and told him to just go on home. The claimant had the next day off and did not report to work on Thursday morning as scheduled. He arrived at the work facility late in the morning, not dressed in work clothes, and went directly to the owner's office. Amongst other comments, the claimant told the employer to lay him off and the employer refused, after which the claimant left. The employer suggested the claimant may have quit because he sold his house and will be relocating to Cedar Rapids, Iowa.

The claimant filed a claim for unemployment insurance benefits effective May 7, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The claimant contends he was fired but the facts establish he voluntarily quit. 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 when he did not report to work on May 4, 2006 and only later arrived to ask the employer to lay him off work.

The claimant's testimony was somewhat inconsistent and not credible. The employer offered information about the claimant relocating and when the claimant was asked whether his house was for sale, he said yes it "is for sale" but later admitted it had already sold. He testified the manager said he would fire him the next day but later changed his testimony to claim that the manager fired him that day. And finally, the claimant contends he had already been fired but testified he went to the employer after being fired to ask the employer to lay him off work. When he was advised the last statement did not make sense to the Administrative Law Judge, he testified, "I guess I was going up there to talk about my unemployment."

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

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.

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 May 31, 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 \$2,128.00.

sdb/pjs