

**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**

**DAN E MILLER
3425 E 36TH CT
DES MOINES IA 50317**

**UNIQUE FORM SERVICES
3200 COLFAX AVE
DES MOINES IA 50317**

**Appeal Number: 04A-UI-09434-RT
OC: 02-01-04 R: 02
Claimant: Respondent (1)**

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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Unique Form Services, filed a timely appeal from an unemployment insurance decision dated August 25, 2004, reference 02, allowing unemployment insurance benefits to the claimant, Dan E. Miller. After due notice was issued, a telephone hearing was held on September 27, 2004, with the claimant participating. Stephen Hernandez, Owner, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time carpenter from on or about June 15, 2004 until he voluntarily quit on or about July 17, 2004. The claimant quit because his pay was reduced. When the claimant was first hired, he was told that he would be paid \$12.00 per hour and that is what he received for the first pay period. However, the claimant learned from coworkers that his pay was going to be reduced to \$10.00 per hour. Before the claimant got his second check, he quit on July 17, 2004 when he simply failed to return to work. His second check did reflect the reduction in pay. The employer did pay the claimant less because of the claimant's alleged poor attendance. The claimant did not express concerns to the employer about the reduction in his pay nor did he indicate or announce an intention to quit because he did not think it would do any good. The employer agreed that he was not going to change his mind in reducing the claimant's pay and he believed that the claimant was aware that he was not going to change his mind. Pursuant to his claim for unemployment insurance benefits filed effective February 1, 2004 and reopened effective August 1, 2004, the claimant has received unemployment insurance benefits following his separation from the employer herein in the amount of \$534.78 as follows: \$311.00 for benefit week ending August 7, 2004 and \$223.78 for benefit week ending August 14, 2004. These benefits, coupled with benefits received by the claimant prior to his separation from the employer exhausted his unemployment insurance benefits for benefit year beginning February 1, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not.

871 IAC 24.23(25) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The parties agree that the claimant voluntarily left his employment. The administrative law judge concludes that the claimant left his employment on or about July 17, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. Although it is a close question, the administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. Neither witness was particularly credible and both witnesses appeared to act precipitously. In any event, the evidence establishes that after agreeing that the claimant would be paid \$12.00 per hour, the claimant's pay was reduced to \$10.00 an hour after his first paycheck because of attendance. The employer's witness,

Stephen Hernandez, Owner, testified that he had never agreed with the claimant to pay him \$12.00 an hour but conceded that he had paid the claimant for his first paycheck \$12.00 per hour. This certainly looks like an agreement to the administrative law judge. Thereafter, Mr. Hernandez agreed that he reduced the claimant's pay to \$10.00 an hour because of attendance. The claimant testified that he did not receive his second check before quitting but knew he was going to get a reduction in pay because others workers had told him that. It appears to the administrative law judge that the claimant acted precipitously in quitting but Mr. Hernandez agrees that he did cut his pay and the claimant learned of that when he got his paycheck. There is not a preponderance of the evidence that the claimant was actually discharged or that the cut in pay was appropriate. Mr. Hernandez testified that he cut the claimant's pay because of attendance. The claimant had some explanation for his attendance. There is also no evidence that Mr. Hernandez went to the claimant and threatened the claimant with some kind of action if his attendance did not improve. Rather, Mr. Hernandez simply cut the claimant's pay. Under these circumstances, the administrative law judge is constrained to conclude that the employer willfully breached its contract of hire with the claimant, which breach is substantial involving remuneration. Therefore, the administrative law judge concludes that this is good cause attributable to the employer for the claimant's quit. The claimant concedes that he did not express concerns to the employer about these matters or threaten to quit prior to his quit. However, the claimant testified he did not do so because it would not make any difference and Mr. Hernandez agreed that if the claimant had expressed concerns and threatened to quit, it would not have changed his mind and he would have still docked or reduced the claimant's pay. Under these circumstances, the administrative law judge is constrained to conclude that it would have done no good for the claimant to have expressed any concerns to the employer or threatened to quit prior to his quit. The administrative law judge must state that both parties seemed very cavalier either about their work or about their employees and the actions that they took thereto.

Accordingly, and for all the reasons set out above, the administrative law judge concludes, although it is a close question, that the claimant left his employment voluntarily with good cause attributable to the employer and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

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 administrative law judge concludes that among other benefits, the claimant has received unemployment insurance benefits in the amount of \$534.78 since separating from the employer herein on or about July 17, 2004 and reopening his claim for benefits effective August 1, 2004.

The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits. The administrative law judge notes that the claimant has now exhausted his benefits for benefit year beginning February 1, 2004 and will not be entitled to unemployment insurance benefits until February 2005.

DECISION:

The representative's decision of August 25, 2004, reference 02, is affirmed. The claimant, Dan E. Miller is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he left his employment voluntarily with good cause attributable to the employer. As a result of this decision the claimant is not overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

pjs/b