

**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**

**XAVIER O JONES  
407 DUNREATH DR NE  
CEDAR RAPIDS IA 52402**

**ACTIVE THERMAL CONCEPTS INC  
1110 INDUSTRIAL AVE  
HIAWATHA IA 52233**

**Appeal Number: 04A-UI-05868-BT  
OC: 05/02/04 R: 03  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Xavier Jones (claimant) appealed an unemployment insurance decision dated May 19, 2004, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Active Thermal Concepts, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 16, 2004. The claimant participated in the hearing. The employer participated through Michelle Beard, Office Manager.

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 asbestos removal employee from May 16, 2003 through December 24, 2003. He was considered to have voluntarily quit his employment after three consecutive days of no-call/no-show in violation of company policy. He was unable to report to work because he was incarcerated.

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.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant was considered to have voluntarily quit on December 24, 2003 after he was a no-call/no-show for three consecutive days. It is his burden to prove that the voluntary quit was for a good reason that would not disqualify him. Iowa Code Section 96.6-2. The employer's policy provides that an employee is considered to have voluntarily quit if he is absent without notice for three consecutive workdays. The claimant failed to report to work as of December 22, 2004 because he was incarcerated. The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without notice in violation of company rule or when an employee is deemed to have left due to incarceration. 871 IAC 24.25(4) and (16). The claimant's separation was without good cause attributable to the employer. Benefits are denied.

DECISION:

The unemployment insurance decision dated May 19, 2004, reference 01, is affirmed. 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.

sdb/b