

**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**

**MITCH T KILLION
17 W 4TH APT 5
ATLANTIC IA 50022**

**CONCEPT BUILDERS LTD
1006 SW 7TH ST
ATLANTIC IA 50022**

**Appeal Number: 05A-UI-07451-SWT
OC: 08/22/04 R: 01
Claimant: Respondent (4)**

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 for Other Employment
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 18, 2005, reference 05, that concluded the claimant was eligible to receive benefits for the week ending June 25, 2005, because the employer had terminated his employment before the effective date of his resignation. A telephone hearing was held on August 4, 2005. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Darci Richer participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 22, 2004. His weekly benefit amount was determined to be \$310.00.

The claimant worked full time for the employer from October 4, 2004, to June 22, 2005. His rate of pay was \$9.00 per hour. On June 20, 2005, the claimant informed the employer that June 24, 2005, would be his last day of work because he had accepted another job with DC General Contractors.

On June 22, 2005, the claimant was informed that the employer did not need him to work the rest of the week. The claimant worked a total of 20.5 hours during the week ending June 25, 2005, and earned wages of \$185.00.

The claimant filed a weekly claim for unemployment insurance benefits for the week June 25, 2005, because he was working less than full time during the week and his earnings were less than his weekly benefit amount. He did not file after June 25, 2005, because he started his new job.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant was eligible for partial unemployment insurance benefits for the week ending June 25, 2005. The claimant filed a claim requesting partial unemployment insurance benefits because his earnings were less than the weekly benefit amount and he was working part-time.

Iowa Code Section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code Section 96.19-38-b provides in part:

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

The claimant was entitled to partial unemployment insurance benefits since his earnings were less than his weekly benefit amount plus \$15.00.

The next issue is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left work to accept other employment and performed services in that new employment. He is not subject to disqualification as of June 26, 2005, for voluntarily quitting employment. The employer is not a chargeable employer on this claimant. Pursuant to the statute, the employer's account will not be charged for benefits paid to the claimant in the future if the employer becomes a base period employer.

DECISION:

The unemployment insurance decision dated July 18, 2005, reference 05, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account will be subject to charge for benefit paid to the claimant.

saw/kjw