

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

LARRY E SWARD JR  
2433 AVE L  
APT #D  
COUNCIL BLUFFS IA 51501

VOCATIONAL DEVELOPMENT CENTER  
612 S MAIN  
COUNCIL BLUFFS IA 51503

Appeal Number: 06A-UI-00902-DT  
OC: 01/01/06 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, 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 Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Vocational Development Center, Inc. (employer) appealed a representative's January 20, 2006 decision (reference 01) that concluded Larry E. Sward, Jr. (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2006. The claimant participated in the hearing. Molly Wallace appeared on the employer's behalf and presented testimony from two witnesses, Mary Beth Elliott and Kim Coffelt. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on December 1, 2004. He worked full time as a home and community based service assistant in the employer's organization providing services to mentally and physically handicapped persons. His last day of work was December 6, 2006.

The claimant had been informed several weeks before December 6 that there would be an auditor arriving and that he needed to turn in his documentation and paperwork for his services provided to clients. On December 6, one of the team leaders, Ms. Elliott, contacted him at approximately 3:00 p.m. and told him she needed the paperwork that day. He told her he would bring his paperwork to her. However, he did not bring any paperwork in that day or evening.

On December 7, 2005, Ms. Elliott again contacted the claimant at approximately 8:00 a.m. and again asked for the paperwork; he again told her he would bring it in to her. When he did not arrive at the office, another team leader, Ms. Coffelt, called the claimant at approximately 10:30 a.m. and again told him that they needed the paperwork, saying that even a portion of the paperwork would look better than none.

The claimant normally picked up a client for lunch at noon on Wednesdays. When the claimant had not picked up the client by 12:30 p.m. on December 7, Ms. Elliott again tried reaching the claimant. He called her a short time later. She asked him, "where are you?" and he said, "shopping." She asked him what that was supposed to mean since the client was standing there waiting and becoming upset, and he said, "I guess it means I quit, 'cause I don't have my work done, and I'd rather quit than be fired." She repeated, "you mean you're quitting?" and the claimant confirmed he was.

Later that afternoon the claimant arranged to meet with Ms. Elliott at a local mall to turn over what he had. They discussed the situation, and she informed him that he should not have quit. He told her he had been having some personal stress, and she advised him that he should contact the employer's management and try to explain he had made a bad decision and see if he could get his job back. On his behalf, Ms. Elliott made some communications with management to advise them of the claimant's situation, but the claimant never contacted management directly, and on December 27, 2005 the employer advised the claimant that since he had not yet done the necessary things to attempt to return, his employment was ended.

The claimant established a claim for unemployment insurance benefits effective January 1, 2006. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$988.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The claimant did express his intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. 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 representative's January 20, 2006 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of December 8, 2005, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

ld/pjs