

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

HORST J PIKSCHUS
1207 OLD LINCOLN HWY
CRESCENT IA 51526

PRESIDENTIAL PROPERTY SVCS
180 S BROADWAY
WHITE PLAINS NY 10605

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Appeal Number: 05A-UI-00638-DWT
OC: 12/26/04 R: 01
Claimant: Appellant (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

STATEMENT OF THE CASE:

Horst J. Piksuschus (claimant) appealed a representative's January 14, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Presidential Property Services, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 2, 2005. The claimant participated in the hearing with his attorney, Michael Winter. Tammy Ross, the property manager, appeared on the employer's behalf. 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 his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 2, 2002. The claimant worked as a full-time maintenance assistant. His supervisor was Bob Rice. When the claimant started working he earned \$10.00 an hour. During his employment he received raises and earned \$12.75 per hour at the end of his employment.

Many times during his employment the claimant worked more than 40 hours a week. Even though the claimant complained to his supervisor and Ross about not getting paid for all the work he did, there was only one time the employer paid him for 15 to 20 hours of extra work he did. The claimant never received time and a half for working more than 40 hours a week. The claimant understood a supervisor could be salaried, but the claimant was not a supervisor.

On August 17, 2004, the claimant notified Ross that after he had used all of his sick leave and vacation days, he would only work another two weeks. The claimant planned to help train a new employee and then quit working for the employer. The claimant quit because he regularly worked more than 40 hours and the employer repeatedly failed to pay him for all the hours he worked.

The claimant's back was hurting on August 17. The claimant told a co-worker he was going home to lay down. When the claimant got home, he took some muscle relaxants. After Ross learned the claimant went home, she told his supervisor to call and tell him that if he did not report back to work in 15 minutes, he would not have a job. Ross did not know the claimant told a co-worker he was going home because of back problems. The claimant did not hear his supervisor's message until sometime after 5:00 p.m. The claimant called his supervisor to let him know that the claimant had told a co-worker he was leaving work before he went home. The claimant did not work after August 17, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. When the claimant gave the employer his resignation notice on August 17, 2004, the claimant voluntarily quit his employment. The fact the employer did not allow the claimant to work until the end his notice is not relevant because the claimant did not establish a claim until the week of December 26, 2004.

When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2. The law presumes a claimant quits with good cause when he quits because of a substantial change in the contract of hire. 871 IAC 24.26(1). An employer's failure to pay an employee for all the hours an employee works, amounts to a willful breach of contract of hire. When an employee accepts employment it is with the understanding the employer pays the employee, an hourly employee, for all hours the employee works. The evidence establishes the employer did not pay the claimant for all hours he worked and never paid him overtime pay. The claimant advised the employer prior to resigning he would quit if the employer did not pay him for all the hours he worked. Even when the claimant resigned, he

intended to give the employer an opportunity to address the problem, but the employer did nothing. The employer's assertion that the corporate office issues employees' paychecks may be true, but this does not excuse the local manager's failure to address and resolve the claimant's concern. The employer's failure to pay the claimant for all the hours the claimant worked amounts to a breach in the employment contract. Therefore, the claimant established good cause for quitting. As of December 26, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 14, 2005 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of December 26, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs