

**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**

**JOHN J AHERN
2235 GRAND #1
WEST DES MOINES IA 50265**

**THE WALDINGER CORPORATION
2601 BELL AVE
DES MOINES IA 50321-1120**

**Appeal Number: 04A-UI-12651-DT
OC: 10/31/04 R: 02
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, 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 Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The Waldinger Corporation (employer) appealed a representative's November 16, 2004 decision (reference 01) that concluded John J. Ahern (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 December 17, 2004. The claimant received the hearing notice and responded by calling the Appeals Section on December 2, 2004. He indicated that he would be available at the scheduled time for the hearing at telephone number (515) 707-1767. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available. Therefore, the claimant did not participate in the hearing. Charity Nelson

appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the employer, 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 June 26, 2000. He worked full time as a senior programmer/analyst in the employer's sheet metal and mechanical contracting business. His last day of work was October 28, 2004.

On October 26, the claimant refused to assist a branch user with a problem that he was responsible for being able to assist. As a result, his supervisor reprimanded him. Later that day, the claimant told coworkers that he was going to resign the next day. On October 27, the claimant called in sick. On October 28, he came in and cleared out all of his personal effects but his coffee cup, and emptied out all of his drawers and file cabinets.

On October 29, the claimant came into work. Having seen that the claimant had cleared out his entire work area but for his coffee cup, and having heard that the claimant had told coworkers he was resigning, the claimant's supervisor determined that the claimant was simply waiting to be fired. He told the claimant he was terminated, who then grabbed his coffee cup and left.

The claimant established a claim for unemployment insurance benefits effective October 31, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$620.00.

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 communicate 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). In this case, the claimant intentionally took actions specifically designed to force the employer to end his employment. Where an employee challenges an employer to discharge him and the employer responds by terminating the employment, it is the employee who took the provocative action who actually initiated the separation, and it is treated as a quit for purposes of unemployment insurance. By affirmatively telling coworkers he was quitting and

clearing out his work area with the apparent intention of forcing the employer to discharge him because he no longer wished to remain in her employment with the employer, 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 Section 96.6-2. Leaving because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not satisfied his burden. Benefits are denied.

The claimant is overpaid benefits in the amount of \$620.00.

DECISION:

The representative's November 16, 2004 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of October 29, 2004, 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. The claimant is overpaid benefits in the amount of \$620.00.

ld/b