

**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**

**ADAM J MILLER
2112 – 215TH ST
INDEPENDENCE IA 50644-9200**

**IOWA ENGINEERED PROCESSES CORP
513 – 17TH ST SE
INDEPENDENCE IA 50644**

**Appeal Number: 06A-UI-05321-LT
OC: 04-23-06 R: 04
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)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from the May 15, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 8, 2006. Claimant did not participate. Employer participated through Steve Gruber.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time laborer/painter/inspector from August 1, 2005 through April 20, 2006 when he quit because he did not want to accept the position employer offered him as a fabricator on second shift (where training was available) or painting on first shift after the customer did not want to accept his work due to quality issues as an inspector, a position he

had held since December 2005. He had the same problems throughout the assignment, never improved and was not capable of doing it so employer wanted to place him in another job or his original job. Claimant declined to be returned to his painting job since he did not like painting and did not want to work second shift, even though that was the only shift when employer had time to train him as a fabricator. Employer is still willing to assist with his training at Hawkeye when they establish a fabricator training program location. If claimant is interested in this opportunity, he should maintain contact with employer.

The claimant has received unemployment benefits since filing a claim with an effective date of April 23, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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(27) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (27) The claimant left rather than perform the assigned work as instructed.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. *Cobb v. Employment Appeal Bd.*, 506 N.W.2d 445 (Iowa 1993).

The employer has the right to allocate its personnel in accordance with its needs and available resources. Since claimant had previously worked as a painter, his unwillingness to return to that job, after being unable to perform the inspector duties, was not a good cause reasons for leaving the employment. Benefits are denied.

Iowa Code § 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 May 15, 2006, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he 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 \$796.00.

dml/cs