

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

JEREMY J MIDKIFF
1305 – 6TH ST
ONAWA IA 51040

BARNETT II INC
319 E CUMMINS ST
UTE IA 51060

AMENDED

Appeal Number: 05A-UI-03229-BT
OC: 02/20/05 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, 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

STATEMENT OF THE CASE:

Barnett II, Inc. (employer) appealed an unemployment insurance decision dated March 17, 2005, reference 01, which held that Jeremy Midkiff (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2005. The claimant participated in the hearing. The employer participated through owners Rick and Deb Barnett.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time welder/laborer from October 2003 through February 24, 2005. He quit his employment without advance notice because some co-employees on his crew were doing drugs. The crew was working in Oklahoma and the claimant observed it when he was driving the work van to the worksite. The claimant and another employee told the supervisor, but the supervisor could not take action because he did not see it. The claimant and his co-worker told the supervisor they were quitting and were taking the work van back to Iowa. The claimant argued with the supervisor who finally told him that if he took the van, the supervisor would notify the Oklahoma Highway Patrol that the van was stolen. The supervisor followed the claimant and the co-worker back to the hotel and told the hotel clerk that the claimant and his co-worker were quitting so any further charges would be the individual's responsibility.

The claimant called his federal probation officer to report the circumstances, since he could go back to prison if he was around drugs. The owner was then called and the claimant reported he was quitting because members of the crew were doing drugs. The claimant refused to reveal their identities when the employer asked for names. Both Rick and Deb Barnett were on the telephone with the claimant. Mr. Barnett finally told the claimant, "You sons-of-bitches, go back to work or when you get back to Iowa, find another job because you're fired." The claimant did not go back to work and was angry because he had to spend all the money he had to support himself in Oklahoma while he waited for someone to come get him.

The claimant filed a claim for unemployment insurance benefits effective February 10, 2005 and has received benefits after the separation from employment in the amount of \$2,853.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated his intent to quit and acted to carry it out by walking off the job without advance notice while working in Oklahoma.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). In order to show good cause for leaving employment based on intolerable or detrimental working conditions, an employee is required to take the reasonable step of informing the employer about the conditions the employee believes are intolerable or detrimental and that he intends to quit unless the conditions are corrected. The employer must be allowed the chance to correct those conditions before the employee takes the drastic step of quitting employment. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Although the

claimant told the employer why he was quitting, he did not offer the employer any time to rectify the problem and refused to assist the employer in doing so by not giving the employer the names of the individuals doing drugs. Inasmuch as the claimant did not give the employer an opportunity to resolve his complaints prior to leaving employment, the separation was without good cause attributable to the employer. 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 unemployment insurance decision dated March 17, 2005, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has 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 \$2,853.00.

sdb/sc/pjs