

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

DONALD W JOHNSON JR
4140 46TH ST
DES MOINES IA 50310

A J ALLEN MECHANICAL
CONTRACTORS INC
320 SE 6TH ST
DES MOINES IA 50309-5122

Appeal Number: 04A-UI-09463-RT
OC: 03/28/04 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 96.6-2 – Initial Determination (Previous Adjudication)

STATEMENT OF THE CASE:

The employer, A. J. Allen Mechanical Contractor, Inc., filed a timely appeal from an unemployment insurance decision dated August 27, 2004, reference 02, allowing unemployment insurance benefits to the claimant, Donald W. Johnson, Jr., because the separation had been previously adjudicated and that decision remained in effect. After due notice was issued, a telephone hearing was held on September 27, 2004, with the claimant participating. Edward Allen, President, and Andy Roberts, Foreman, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. This appeal is consolidated with appeal number 04A-UI-09462-RT for the purposes of the hearing with the consent of the parties.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant's entitlement to unemployment insurance benefits arises from a separation from his employer occurring on July 21, 2004. In appeal number 04A-UI-09462-RT, the administrative law judge entered a decision adjudicating the separation on July 21, 2004 and determining that the claimant's separation was disqualifying because he left his employment voluntarily without good cause attributable to the employer and the claimant was not entitled to receive unemployment insurance benefits. The administrative law judge also concluded in that appeal that the claimant was overpaid unemployment insurance benefits in the amount of \$933.00. There was no other separation from the employer in 2004. The issue here involves the same separation, July 21, 2004 and that separation has been previously adjudicated.

REASONING AND CONCLUSIONS OF LAW:

The question presented in this appeal is whether the issues presented in this appeal have been previously adjudicated. The administrative law judge concludes that the issues presented by this appeal have been previously adjudicated and as a result of that previous adjudication, the claimant has been determined to be disqualified to receive unemployment insurance benefits.

Iowa Code Section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code Section 96.6-3 provides:

3. Appeals. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

The administrative law judge concludes that the issues presented in this appeal, namely, whether the claimant's separation from employment on July 21, 2004, was disqualifying and whether he has been overpaid unemployment insurance benefits have been previously adjudicated in appeal number 04A-UI-09462-RT. In that appeal, the administrative law judge concluded that the claimant was disqualified to receive unemployment insurance benefits because he left his employment voluntarily without good cause attributable to the employer and further that the claimant was overpaid unemployment insurance benefits in the amount of \$933.00.

DECISION:

The representative's decision dated August 27, 2004, reference 02, is reversed. The issues presented by this appeal, namely, whether the claimant is entitled to receive unemployment insurance benefits and whether he has been overpaid unemployment insurance benefits have been previously adjudicated in appeal number 04A-UI-09462-RT. In that appeal, the administrative law judge concluded the claimant was not entitled to receive unemployment insurance benefits because he left his employment voluntarily without good cause attributable to the employer and, as a result, he was overpaid unemployment insurance benefits in the amount of \$933.00. That decision remains in full force and effect until and unless that decision is appealed to the Employment Appeal Board. There was only one separation from the employer herein in 2004, on July 21, 2004, which was adjudicated in appeal number 04A-UI-09462-RT. The claimant is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits because he left his employment voluntarily without good cause attributable to the employer and is overpaid unemployment insurance benefits in the amount of \$933.00 as set out in appeal number 04A-UI-09462-RT.

kjf/b