

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

ELDON R HAND
1275 – 75TH ST APT 2
CLIVE IA 50325

MOSAIC
C/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 05A-UI-02665-BT
OC: 02/06/04 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 Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Mosaic (employer) appealed an unemployment insurance decision dated March 8, 2005, reference 01, which held that Eldon Hand (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 March 31, 2005. The claimant participated in the hearing. The employer participated through Angie Ksiazek, Program Coordinator; Jen Zajicek, Habilitation Coordinator; Marsha Edgington, Program Services Director; Nancy Seel, Human Resources Manager; and Lynn Corbeil, Employer Representative.

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 hired as a full-time direct support manager on April 19, 1997. He left on military duty from March 13, 2003 and returned to work on January 6, 2004. He turned in his two-week notice to quit on October 25, 2004. The notice was dated on October 22, 2004 with an effective separation date of November 5, 2004. He subsequently requested and was allowed to extend his notice period twice to December 5, 2004, which is the separation date. The claimant told his supervisor and his supervisor's boss that he was quitting to focus on his education since he would soon be graduating. He started going to school part-time approximately four years earlier but in the last two years, he had been going to school on a full-time basis in addition to working full-time. The employer believed the claimant quit for the reason stated and had not been informed of any other issues. The claimant did not indicate otherwise until the fact-finding interview and the appeal hearing. He contends he quit due to continuing harassment from the employer.

The claimant filed a claim for unemployment insurance benefits effective February 6, 2005 and has received benefits after the separation from employment in the amount of \$1,536.00.

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 turning in his resignation notice and not returning to work after December 5, 2004.

The claimant contends he quit his employment because of intolerable working conditions. The evidence provided does not show intolerable or detrimental working conditions. The claimant told two supervisors that he was quitting in order to focus more on school and he never provided any information on his resignation forms that would indicate there were any problems. Furthermore, the claimant requested and was allowed to work one month after the effective date of his resignation, which does not seem likely if the working conditions were that bad. Whatever personal reasons the claimant may have had for quitting his employment, his separation cannot be attributed to the employer. 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 claimant has not satisfied that burden. 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 8, 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 \$1,536.00.

sdb/sc