

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

JAMES BENTLEY
1041 AMHERST AVE
WATERLOO IA 50703

ACCURATE GEAR & MACHINE INC
PO BOX 257
241 S STATE ST
DENVER IA 50622-0257

AMENDED

Appeal Number: 06A-UI-02573-BT
OC: 03/20/05 R: 03
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:

Accurate Gear & Machine, Inc. (employer) appealed an unemployment insurance decision dated February 27, 2006, reference 01, which held that James Bentley (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 23, 2006. The claimant participated in the hearing. The employer participated through Andy Roberts, Plant Manager.

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 machinist from October 24, 2005 through February 8, 2006. He was hired for second shift but was not transferred to second shift until January 23, 2006 due to training. The claimant worked Mondays through Thursdays and once he went to second shift, which was from 2:30 p.m. to 1:00 a.m., he only worked four days. He was absent on January 26 and 31, February 1, 2, 6, 7, and 8, 2006. He voluntarily quit his employment on February 8, 2006 alleging a work-related medical condition but failed to provide the employer with any medical documentation prior to quitting.

The claimant has diabetes and reported a specialist told him he should not work second shift since he was having difficulty controlling his blood sugars. He admitted he did not provide any supporting medical documentation to the employer prior to his separation. No documentary evidence has been provided indicating a doctor advised the claimant to quit his employment. The claimant testified he is able and available to work at this time.

The claimant filed a claim for unemployment insurance benefits effective March 20, 2005 and has received benefits after the separation from employment in the amount of \$831.00.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is able and available to work. The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). He has testified that he is able and available to work and there is no evidence indicating otherwise.

The next issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant only worked four days on second shift but contends that as a result of having to work on second shift, he could not control his blood sugars. He contends he was told he could not work second shift but never provided any medical documentation supporting this contention. The claimant has not established it was necessary to quit his employment since he could have taken a leave of absence to get his blood sugar in control, if that was the problem, and could have worked with the employer towards a resolution.

An individual who voluntarily leaves their employment due to an alleged work-related illness or injury must first give notice to the employer of the anticipated reasons for quitting in order to give the employer an opportunity to remedy the situation or offer an accommodation. Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993). In the case herein, the claimant simply quit because he could not work second shift due to his diabetes. There was no time or opportunity to resolve any work-related medical problems.

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 February 27, 2006, 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 \$831.00.

sdb/kkf/tjc