

**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**

**JACKIE D HARDING  
PO BOX 103  
ALBIA IA 52531**

**DEARBORN ROOFING INC  
D/B/A BECKER ROOFING CO  
327 CHURCH ST  
OTTUMWA IA 52501**

**Appeal Number: 04A-UI-11068-RT  
OC: 09-12-04 R: 03  
Claimant: Appellant (5)**

**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, 4<sup>th</sup> 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 Quitting**

**STATEMENT OF THE CASE:**

The claimant, Jackie D. Harding, filed a timely appeal from an unemployment insurance decision dated October 6, 2004, reference 02, denying unemployment insurance benefits to him because records indicate he was discharged from work on August 16, 2004 for disqualifying misconduct. After due notice was issued, a telephone hearing was held on November 4, 2004 with the claimant participating. Brenda Newton, office manager; Arlo Dearborn, vice president; and Carolyn Dearborn, president, participated in the hearing for the employer, Dearborn Roofing, Inc., doing business as Becker Roofing Company. This matter was consolidated with appeal 04A-UI-11067-RT for the purposes of the hearing with the consent of the parties. Claimant's Exhibits A and B were admitted into evidence. The administrative law judge takes

official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibits A and B, the administrative law judge finds: The claimant was employed off and on by the employer as a full-time seasonal laborer for several years. From May 6, 2004 to May 19, 2004, the claimant was absent without notifying the employer. Neither the employer nor the claimant knew why he was absent during that period of time. However, when the claimant came back to work, the employer accepted the claimant back and allowed him to continue working. The claimant did not apply for unemployment insurance benefits during this period of time.

The claimant was again absent from work from August 13, 2004 to August 20, 2004. For four days the claimant was in the hospital, from August 13, 2004 to August 16, 2004. Early in the absences, the claimant called and spoke to Arlo Dearborn, vice president and one of the employer's witnesses. He informed Mr. Dearborn that he was under a doctor's care. Mr. Dearborn said that was acceptable. The claimant then came to the office on August 20, 2004 to pick up his check but not to return to work. He provided the employer with a doctor's excuse, as shown at Claimant's Exhibit A, excusing the claimant from work from August 17, 2004 to August 19, 2004. At that time, the claimant was not told he was fired or discharged. However, the claimant never returned to work thereafter. The employer has a rule, although it is not in writing, that indicates that after three absences in a row, the employee must notify the employer and, if not, those three absences are considered a quit.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

Iowa Code section 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(4) 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 section 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 section 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The administrative law judge concludes that the claimant effectively left his employment voluntarily on August 25, 2004 when he failed to return to work from and after August 20, 2004. The evidence establishes that the claimant was off work from August 13, 2004 to August 20, 2004 and only notified the employer on one occasion why he was absent. The claimant then returned to work on August 20, 2004, not to return to work but to pick up his check. At that time, the claimant gave a doctor's statement excusing him from work from August 17, 2004 to August 19, 2004. The claimant then never returned to work. The employer has a rule, albeit oral, that an employee who is going to be absent for three days in a row must notify the employer and, if the employee fails to do so, the employer considers that a quit. The claimant never returned to work after August 20, 2004 and the administrative law judge is constrained to conclude that by failing to do so, the claimant voluntarily quit. The claimant testified that he called and spoke to Arlo Dearborn, vice president and one of the employer's witnesses, on two occasions. Mr. Dearborn concedes to only one but, even if the claimant's testimony is correct, both times he called Mr. Dearborn were prior to August 20, 2004. The claimant agrees that he came in and picked up his check on August 20, 2004 and provided the employer a doctor's note excusing him from work from August 17, 2004 to August 19, 2004. The claimant seems to concede that he did not show up on August 20, 2004 to go to work but merely to pick up his check. The claimant's testimony as to what occurred thereafter is not credible. The claimant first testified that he returned to the employer on August 29, 2004 to get a second check. When the claimant learned that was a Sunday, he changed his testimony and testified that he returned to the employer on August 27, 2004. However, the evidence establishes that the claimant did not work for the employer after August 12, 2004 and the claimant even seems to concede this. Therefore, the claimant would not have been entitled to another check on August 27, 2004. He picked up his final check on August 20, 2004. The claimant may well have been under a doctor's care and ill as shown at Claimant's Exhibit B but he did not notify the employer of that. There was no testimony that the claimant ever notified or contacted the employer after August 20, 2004 except for the claimant's testimony that he came in on either August 29 or August 27 and got his check. However, as noted above, this testimony is not credible. The administrative law judge must conclude on the evidence here that the claimant never notified the employer or returned to the employer after August 20, 2004. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective August 25, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The evidence establishes that the claimant never returned to the employer after August 20, 2004. The claimant provided no reasons for his failure to return or for his voluntary quit. Even assuming that the claimant quit because of his illnesses, there is no competent evidence showing adequate health reasons to justify termination or that he informed the employer of the work-related health problem or that he informed the employer that he was going to quit unless the problem was corrected or reasonably accommodated or that the illness was attributable to his employment. See 871 IAC 24.26(6)(b). There is also no evidence that the claimant left his employment upon the advice of a licensed and practicing physician because of any illness or injury or that he has recovered and his recovery has been certified or that he has returned to

the employer and offered to go back to work and no suitable, comparable work was available. See 871 IAC 24.26(6)(a). Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective August 25, 2004, without good cause attributable to the employer, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant on and after August 25, 2004, until or unless he requalifies for such benefits.

DECISION:

The representative's decision of October 6, 2004, reference 02, is modified. The claimant, Jackie D. Harding, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily effective August 25, 2004 without good cause attributable to the employer.

tjc/tjc