

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

HOWARD F THOMPSON
6537 NORTHWEST 54TH COURT
JOHNSTON IA 50131

STEPHENS AUTOMOTIVE INC
5320 NORTHWEST BEAVER DRIVE
JOHNSTON IA 50131

Appeal Number: 04A-UI-02714-BT
OC: 02/01/04 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:

Stephens Automotive, Inc. (employer) appealed an unemployment insurance decision dated March 10, 2004, reference 01, which held that Howard Thompson (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 1, 2004. The claimant participated in the hearing. The employer participated through Jim, Debbie and Jeff Stephens.

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 car salesman on January 12, 1994. He had been off work for several weeks and on Friday, February 6, 2004, the employer was removing snow at the claimant's house when the claimant advised the employer's son he had terminal cancer and would not be returning to work. The claimant stated it would mean a lot to him if the employer would lay him off and allow him to collect unemployment insurance benefits. The son told his parents and the claimant later talked to them. The owners stated since the claimant had quit, they could not state that he had been laid off work. The claimant continued to press the employer through numerous telephone calls that day and on the following Monday, February 9, 2004. The claimant eventually went into the employer's shop on Monday and pressured all three, particularly the son. The son reported the claimant looked him straight in the eye and said, "Get this done for me, you owe me, you son-of-a-bitch." When he realized the employer was not going to allow his unemployment, the claimant said he was returning to work. The employer stated he would have to have a doctor's excuse but after talking to his attorney, the employer advised the claimant he had quit and his resignation had been accepted. The employer further advised the claimant not to return and changed the locks.

The claimant filed a claim for unemployment insurance benefits effective February 1, 2004 and has received benefits after the separation from employment in the amount of \$2,100.00.

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 or if the employer discharged him for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

The claimant contends he was fired but the preponderance of the evidence demonstrates that he quit his employment on February 6, 2004 and the employer accepted his resignation. 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 when on February 6, 2004 he advised the owner's son that he had terminal cancer and would not be returning to work. It was only once the claimant realized the employer would not falsify documents stating he was laid off work in order to allow him to collect unemployment insurance benefits, that he wanted to return to work, but the employer refused.

The claimant, therefore, bears the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code Section 96.6-2. The Iowa Court of Appeals considers it a voluntary quit when a claimant gives notice of resignation which is accepted by the employer, even though the claimant subsequently attempts to withdraw the resignation. Langley v. EAB, 490 N.W.2d 300 (Iowa App. 1992). The claimant quit his employment and only wanted to return to work when he knew the employer was going to contest his unemployment insurance benefits. While the administrative law judge can empathize with the claimant's heartrending personal circumstances, it would be an abuse of discretion to let that tragedy affect the legal outcome of this case. The claimant quit his employment without good cause attributable to the employer and 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 10, 2004, 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 \$2,100.00.

sdb/d