

**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**

**RANDALL E EMERY  
414 W ROCK ISLAND  
KNOXVILLE IA 50138**

**ENGINEERED PLASTIC  
COMPONENTS INC  
1408 ZIMMERMAN DR S  
GRINNELL IA 50112**

**Appeal Number: 04A-UI-02679-RT  
OC: 02/22/04 R: 02  
Claimant: Respondent (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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Engineered Plastic Components, Inc., filed a timely appeal from an unemployment insurance decision dated March 8, 2004, reference 02, allowing unemployment insurance benefits to the claimant, Randall E. Emery and providing that the employer's account may be charged for benefits paid. After due notice was issued, a telephone hearing was held on March 31, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Mark Fosnaught, Human Resources Manager, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer from January 28, 2003 until he separated from his employment on December 8, 2003. On that date, the claimant was transferred to the Pella branch of the employer's business and then the Pella branch of the employer's business was sold to Clarion Technologies on December 10, 2003. The claimant immediately went to work for Clarion Technologies without any lapse in his employment. The claimant then worked for Clarion Technologies until he was separated from that employment on or about January 23, 2004. A representative of Iowa Workforce Development allowed benefits to the claimant as a result of his separation from Clarion Technologies by decision dated March 17, 2004, reference 01, but that decision is on appeal. The separation from the employer herein on December 8, 2003, was characterized by the employer as neither a discharge or a quit, but that claimant immediately went to work for Clarion Technologies. The employer does not contest any unemployment insurance benefits to the claimant as the result of his separation from Clarion Technologies, but maintains that it should not be charged for any benefits to which the claimant may be entitled. The employer completed no paperwork or other documentation for Iowa Workforce Development concerning the sale of its business in Pella, Iowa, but did complete a form sent to them by Iowa Workforce Development and returned it. Iowa Workforce Development records indicate that Clarion Technologies chose to treat its purchase of the Pella, Iowa business of the employer herein, Engineered Plastic Components, Inc., as a new business and operate it as a new business.

Pursuant to his claim for unemployment insurance benefits filed effective February 22, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,200.00 as follows: \$200.00 per week for six weeks from benefit week ending February 28, 2004 to benefit week ending April 3, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not, but any unemployment insurance benefits to which the claimant is entitled relating to wage credits earned with the employer herein shall be charged to the Unemployment Compensation Fund and not charged to the account of the employer herein.
2. Whether the claimant is overpaid unemployment insurance benefits. The claimant is not overpaid unemployment insurance benefits arising out of his separation from the employer herein, but the administrative law judge reaches no conclusion as to whether the claimant is overpaid any unemployment insurance benefits arising out of his separation from a subsequent employer, namely, Clarion Technologies.

Iowa Code Section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Although the employer maintains that the claimant was neither fired nor quit, the administrative law judge concludes under the circumstances here that the claimant actually left his employment voluntarily on December 8, 2003 when he was transferred to the Pella, Iowa business of the employer and then that business was sold to Clarion Technologies. The claimant left his employment with the employer herein to take employment with Clarion Technologies. There was no lapse in his employment. The claimant did not participate in the hearing to provide evidence to the contrary. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily with the employer herein to take new employment with Clarion Technologies. Because the claimant left his employment in good faith for the sole purpose of accepting other employment with Clarion Technologies which he did accept and for whom he performed services, the claimant is not disqualified to receive unemployment insurance benefits. However, any benefits to which the claimant is entitled related to wage credits earned with the employer herein shall be charged to the Unemployment Compensation Fund and not charged to the account of the employer herein. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible and not disqualified but any benefits to which he is entitled shall be charged to the Unemployment Compensation Fund and not to the account of the employer herein.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,200.00 since separating from the employer herein on or about December 8, 2003 and filing for such benefits effective February 22, 2004. As a result of his separation from the employer herein, the claimant is not overpaid any such benefits. However, the administrative law judge reaches no conclusion as to whether the claimant is overpaid any such benefits as a result of a separation from a subsequent employer, namely, Clarion Technologies. That separation is pending before the Appeals Section at reference 01.

DECISION:

The representative's decision dated March 8, 2004, reference 02, is modified. The claimant, Randall E. Emery, is not disqualified to receive unemployment insurance benefits arising out of his separation from the employer herein, Engineered Plastic Components, Inc., on or about December 8, 2003. However, any unemployment insurance benefits to which the claimant is entitled related to wage credits earned with the employer herein shall be charged to the Unemployment Compensation Fund and not charged to the account of the employer herein. As a result of his separation from the employer herein, the claimant is not overpaid any unemployment insurance benefits. The administrative law judge reaches no conclusion as to whether the claimant is overpaid unemployment insurance benefits arising out of a separation from a subsequent employer, Clarion Technologies, nor does the administrative law judge reach any conclusion as to whether that separation is disqualifying.

kjf/b