

**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**

**SHAWN P FAHEY
3604 ROLLINS AVE
DES MOINES IA 50312**

**SHAW ELECTRIC INC
930 E RIVER DRIVE
DAVENPORT IA 52803-5737**

**Appeal Number: 05A-UI-07442-RT
OC: 06-19-05 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, 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 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quitting
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Shaw Electric, Inc., filed a timely appeal from an unemployment insurance decision dated July 14, 2005, reference 02, allowing unemployment insurance benefits to the claimant, Shawn P. Fahey. After due notice was issued, a telephone hearing was held on August 18, 2005, with the claimant participating. Dan Freeman, Safety and Human Resources Manager, and Cynthia Carson, Manager of Light Expressions, participated in the hearing for the employer. Leah Van Wauf, Human Resources Benefits Manager, was available to testify for the employer, but not called because her testimony would have been repetitive and unnecessary. Claimant's Exhibit A was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance

records for the claimant. This appeal was consolidated with appeal number 05A-UI-08512-RT for the purposes of the hearing with the consent of the parties as set out in the decision in that appeal. The hearing was initially scheduled in this matter on August 4, 2005, at 2:00 p.m. and rescheduled at the employer's request. The claimant contacted the administrative law judge at 1:29 p.m. on August 16, 2005, and asked for a postponement or continuance, because he had an interview prior to the hearing. The administrative law judge denied the claimant's request because the claimant thought he could do the hearing after the interview. The claimant participated in the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer, Shaw Electric, Inc., from March 14, 2003, until he immediately went to work for a new business established by the employer, Light Expressions, on January 1, 2005. The claimant then worked for Light Expressions until he was separated from his employment on June 15, 2005. There was no lapse in the claimant's employment between Shaw Electric, Inc., the employer herein, and Light Expressions.

On June 9 and 10, 2005, the claimant was absent from work. He called and spoke to the manager of Light Expressions, Cynthia Carson, on June 9, 2005. The claimant explained that he was assigned to bed rest for two days, June 9 and 10, 2005, and that thereafter he would have to be on light duty for the following week. The claimant intimated that his absences were due to a work related injury. Ms. Carson told the claimant that she had at least a half a day of work on Monday, June 13, involving paperwork, which would be light duty. The claimant acknowledged this and indicated that he would come to work for that. Ms. Carson then called the employer's witness, Dan Freeman, Safety and Human Resources Manager, about the potential job related injury of the claimant. On Friday, June 10, 2005, Mr. Freeman called Light Expressions and the claimant was there delivering a doctor's excuse, as shown at the first page of Claimant's Exhibit A. Mr. Freeman asked the claimant why he was absent on June 9 and 10, 2005. The claimant explained that he had a doctor's excuse for those two days. The claimant indicated that he was off work for a work related injury. Mr. Freeman explained to the claimant that he would have to go see an employer's physician and had already had an appointment set up for 4:00 p.m. on June 10, 2005. To accommodate the claimant, Mr. Freeman changed the location of the doctor's appointment, but it remained at 4:00 p.m. on June 10, 2005. The claimant indicated that he would go to the doctor's appointment. However, the claimant did not go to the doctor's appointment. Mr. Freeman was called by the employer's physician at 4:45 p.m., on June 10, 2005, and who told Mr. Freeman that the claimant had not shown up for his appointment. Mr. Freeman then attempted to call the claimant on June 10, 11, and 13, 2005, without success but left messages for the claimant. The claimant was out of town from June 11, 2005 through June 15, 2005, visiting his grandmother, who was ill. When the claimant returned his back was hurting. On June 17 or 20, 2005, the claimant called Mr. Freeman and left a voice mail message indicating that he had heard that he had been replaced and the claimant made certain threats. However, the claimant was not replaced by the employer until June 27, 2005. Sometime on or about June 18, 2005, the claimant left a note for Ms. Carson indicating that he was out of town and told her that he did not have to go to see the company doctor. When the employer had not heard from the claimant during the week of June 13 through the 17, 2005, the employer treated the claimant as a voluntary quit. On June 20, 2005, the claimant returned to work and was told by Ms. Carson that since he was a no-call, no-show the prior week, he was considered as a voluntary quit and did not have a job.

Pursuant to his claim for unemployment insurance benefits filed effective June 19, 2005, the claimant has received unemployment insurance benefits in the amount of \$2,826.00 as follows: \$314.00 per week, for nine weeks, from benefit week ending June 25, 2005 to benefit week ending August 20, 2005.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from his employment with Shaw Electric, Inc., is disqualifying. It was not, but the claimant's separation from Light Expressions was disqualifying as set out in appeal number 05A-UI-08512-RT.

2. Whether the claimant is overpaid unemployment insurance benefits. The claimant is not overpaid unemployment insurance benefits as a result of a separation from the employer herein, Shaw Electric, Inc., but he is overpaid unemployment insurance benefits as a result of his separation from Light Expressions as set out in appeal number 05A-UI-08512-RT.

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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree that the claimant worked for the employer herein, Shaw Electric, Inc., from March 14, 2003 until January 1, 2005. At that time he immediately moved to and became employed by Light Expressions, another employer established by Shaw Electric, Inc. The claimant then worked for Light Expressions for over five months. Since the claimant immediately went to work for Light Expressions after working for Shaw Electric, Inc., and there was no lapse in his employment, the administrative law judge concludes that his separation from Shaw Electric, Inc., was not disqualifying. The claimant's separation from Light Expressions is set out in appeal number 05A-UI-08512-RT. Accordingly, the administrative law judge concludes that insofar as the claimant's separation from the employer herein, Shaw Electric, Inc., is concerned, the claimant is not disqualified to receive unemployment insurance benefits. However, the administrative law judge concluded in appeal number 05A-UI-08512-RT, that the claimant's separation from Light Expressions, was disqualifying.

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 \$2,826.00 since separating from the employer herein, Shaw Electric, Inc., on or about January 1, 2005 and then separating from his second employer, Light Expressions, on June 15, 2005. The administrative law judge concludes that the claimant is not overpaid these benefits as a result of his separation from the employer herein, Shaw Electric, Inc., but he is overpaid such benefits as a result of his separation from Light Expressions as set out in appeal number 05A-UI-08512-RT.

DECISION:

The representative's decision of July 14, 2005, reference 02, is modified. The claimant, Shawn P. Fahey, is not disqualified to receive unemployment insurance benefits as a result of his separation from the employer herein, Shaw Electric, Inc., because he immediately went to work for a new employer, Light Expressions and there was no lapse in his employment. In

appeal number 05A-UI-08512-RT, the administrative law judge concluded that the claimant was disqualified to receive unemployment insurance benefits as a result of his separation from Light Expressions. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of his separation from Shaw Electric, Inc., but in appeal number 05A-UI-08512-RT, the administrative law judge concluded the claimant was overpaid unemployment insurance benefits as a result of his separation from Light Expressions.

dj/pjs