

**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**

**THOMAS R MARCUS  
17 EXPO DR  
IOWA CITY IA 52240**

**OWENS BROCKWAY PLASTIC PRODUCTS  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-08972-RT  
OC: 07-18-04 R: 03  
Claimant: Appellant (1)**

**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 claimant, Thomas R. Marcus, filed a timely appeal from an unemployment insurance decision dated August 11, 2004 reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on September 13, 2004, with the claimant participating. Tammy Marlow, Quality Manager, participated in the hearing for the employer, Owens Brockway Plastic Products. Employer's Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

Although not set out on the notice of appeal, the parties permitted the administrative law judge to take evidence on and decide, if necessary, whether the claimant was overpaid

unemployment insurance benefits under Iowa Code Section 96.3-7. The parties waived further notice of this issue.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time quality servicer from September 18, 2003 until he voluntarily quit on May 17, 2004. At that time he sent an e-mail to the employer's witness, Tammy Marlow, Quality Manager, indicating that he was quitting that day. The claimant testified that he quit because he was asked to provide false numbers on documents, which would result in certificates of analysis for the products shipped by the employer, but the claimant was not asked to do so. The claimant also testified that he quit because he was asked to check on employees and try to get them fired, but the claimant was not asked to check on employees and get them fired. The claimant stated there were no other reasons for his quit. The claimant never expressed any concerns to anyone at the employer about these matters, nor did he ever indicate or announce an intention to quit if any of his concerns were not addressed by the employer. Pursuant to his claim for unemployment insurance benefits filed effective July 18, 2004, the claimant has received no unemployment insurance benefits. However, in a prior benefit year effective July 20, 2003, the claimant received unemployment insurance benefits, among other benefits, in the amount of \$361.80 for two weeks, benefit weeks ending May 22, 2004 and May 29, 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.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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 24.26(2), (3), (4), (1) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (2) The claimant left due to unsafe working conditions.
- (3) The claimant left due to unlawful working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.
- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize

the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The parties concede that the claimant left his employment voluntarily. 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 claimant testified that he left his employment because he was asked to falsify numbers on documents resulting in certificates of analysis. He testified that he was asked to do so by the employer's witness, Tammy Marlow, Quality Manager. However, the claimant's testimony is simply not credible. Ms. Marlow credibly testified that she never asked the claimant to falsify any numbers. The claimant also testified that he quit because he was asked to check on employees and try to get them fired, but Ms. Marlow again testified credibly that this never happened. The administrative law judge is constrained to conclude here that there is not a preponderance of the evidence that the claimant either was asked to falsify numbers or asked to check on employees and get them fired. The claimant was adamant that there were no other reasons for his discharge. Finally, the claimant testified that he never expressed concerns to anyone at the employer about these matters, nor did he ever indicate or announce an intention to quit over these matters. He did not give the employer any opportunity to address either of the concerns he now testifies about. The claimant testified that he did not express such concerns because there was no one that he could trust, but this is not credible. Surely, there was someone at the employer that he could go to to express these concerns. The claimant did not. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits beginning May 17, 2004 or benefit week ending May 22, 2004, in a prior benefit year effective July 20, 2003. Unemployment insurance benefits are denied to the claimant until and unless he requalifies for such benefits.

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 \$361.80 since separating from the employer herein on or

about May 17, 2004, to which he is not entitled and for which he is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision dated August 11, 2004, reference 01, is affirmed. The claimant, Thomas R. Marcus, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he left work voluntarily without good cause attributable to the employer on May 17, 2004. He has been overpaid unemployment insurance benefits in the amount of \$361.80.

b/b