

**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**

**JED R STRAMEL
752 TIPPERARY RD
IOWA CITY IA 52246**

**JUNGE CONTROL INC
PO BOX 8391
CEDAR RAPIDS IA 52408**

**CRAIG PAULSEN
ATTORNEY AT LAW
PO BOX 2833
CEDAR RAPIDS IA 52406 2877**

**Appeal Number: 05A-UI-11630-DWT
OC: 10/16/05 R: 03
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 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Junge Control, Inc. (employer) appealed a representative's November 4, 2005 decision (reference 01) that concluded Jed R. Stramel (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 5, 2005. The claimant participated in the hearing with his attorney, Craig Paulsen. David Junge, the president, and John Duffy, the production manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 5, 2005. The claimant worked full time. The claimant worked in purchasing and Dale Menke was his supervisor. Duffy became the production manager in mid-August 2005.

Prior to October 20, 2005, the claimant and Duffy did not have any confrontations or problems getting along. On October 20 a project had been finished and Duffy wanted to make sure all the paperwork was finished correctly. Even though Duffy assumed the claimant knew and understood the procedure, Duffy sat next to the claimant as he completed paperwork. When the claimant unexpectedly asked Duffy if he wanted to do the claimant's job, Duffy was surprised by the claimant's comment. The claimant's comment and the way in which the claimant acted upset and bothered Duffy. Duffy had some papers in his hand, pushed back his chair so it hit the wall, stood up with papers clenched in his hand and asked why the claimant was so defensive. After a brief verbal exchange Duffy told the claimant that maybe he should kick the claimant. Duffy then left and slammed the door behind him.

The claimant left work shortly after this exchange. The claimant left work because he felt Duffy intimidated and threatened him. The claimant went home. The claimant did not contact Junge or his supervisor to report the incident or ask the employer to address this incident that day or any subsequent day. The claimant did not return to work after October 20, 2005.

The claimant established a claim for unemployment insurance benefits during the week of October 16, 2005. The claimant filed claims for the weeks ending October 22 through December 3, 2005. The claimant received a total of \$2,320.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant quit his employment when he left work early on October 20, 2005, and did not return. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

Although the claimant asserted 871 IAC 24.26(1) through (4) apply in this case, the evidence indicates that only 871 IAC 24.26(4) may apply. The facts show the claimant initiated the confrontation on October 20, 2005. The claimant's unprovoked comment indicates the claimant did not want Duffy sitting next to him suggesting how the claimant should do his work. The evidence then indicates the claimant became perturbed with Duffy and asked if he wanted to do the claimant's job. Duffy was surprised by the claimant's comment. A brief confrontation involving a verbal exchange occurred between the two men. When Duffy left the room he was upset and made an inappropriate comment to the claimant. Even though the claimant asserted Duffy intimidated and threatened him, the claimant never reported this to his supervisor or to

Junge. Since there had been no previous problems between the claimant and Duffy, it is difficult to understand why the claimant did not report this incident to anyone. Instead, the claimant walked off his job and failed to give the employer any opportunity to address this incident and/or discipline any employee. It is difficult to understand why the claimant said nothing to anyone if he really believed on October 20 that Duffy was about to physically hurt him. The claimant's testimony appears to be an exaggeration of what actually occurred. While Duffy's comment and demeanor were not appropriate, the claimant's comments and attitude provoked Duffy. Under the facts of this case, the claimant established personal reasons for quitting. The facts do not, however, establish that the claimant quit his employment for reasons that qualify him to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits during the weeks ending October 22 through December 3, 2005. The claimant has been overpaid \$2,320.00 in benefits he received for these weeks.

DECISION:

The representative's November 4, 2005 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of October 16, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/tjc