

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

GERALD R LEGRAND
3364 – 74TH ST DR
FAIRFAX IA 52228-9301

HOME TOWN RESTYLING INC
1205 N CENTER POINT RD
HIAWATHA IA 52233-1235

Appeal Number: 06A-UI-01358-HT
OC: 01/08/06 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) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Home Town Restyling, filed an appeal from a decision dated January 25, 2006, reference 01. The decision allowed benefits to the claimant, Gerald LeGrand. After due notice was issued a hearing was held by telephone conference call on February 21, 2006. The claimant participated on his own behalf. The employer participated by Controller Kevin Schulte, Administrative Manager Diane Stone and Siding Manager Dave Thomas.

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: Gerald LeGrand was employed by Home Town Restyling from April 4, 2005 until January 9, 2006. He was a full-time siding installer.

On January 6, 2006, the claimant was being assigned to do service work. He was not particularly pleased to do this because he felt he should only be doing service work on his "projects." He called Siding Manager Dave Thomas to ask for his next assignment and was upset to learn that the job he thought he would be doing had been assigned to someone else.

An argument ensued with the claimant bringing up a job some four months previous for which he felt he had not been paid, although he had never brought this concern to the attention of either the controller or the administrative manager. During the course of the heated argument the claimant threatened to punch Mr. Thomas in the mouth and hung up. The manager called the claimant back to continue to discussion and at one point told him that if he did not like the way the business was being conducted he should go and work someplace else. Mr. LeGrand took this to mean he was discharged and did not return to work although work was still available to him.

Gerald LeGrand has received unemployment benefits since filing a claim with an effective date of January 8, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes 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.

The claimant and the siding manger undoubtedly became embroiled in an argument over the phone because of the claimant's disagreement with the jobs he was being assigned. However, service calls are an ordinary part of his job responsibilities and there is no evidence to support his contention that he was only required to do service work on his own jobs.

The claimant feels he was discharged but admitted the manager's words were that he did not like the way the business was being run, he could go work elsewhere. This is not a discharge, but a notice that the claimant was free to accept the jobs assigned or to quit. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer

The record reveals the claimant is of an excitable disposition and chose to discontinue working for this employer because he did not agree with the work assignments. This does not constitute good cause attributable to the employer and the claimant is disqualified.

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 claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 25, 2006, reference 01, is reversed. Gerald LeGrand is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$2,388.00.

bgh/s