

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

RAY D TROTTER
430 GRAND #1602 D
DES MOINES IA 50309

EMCO ENTERPRISES INC
2121 E WALNUT
DES MOINES IA 50317-2264

Appeal Number: 04A-UI-00621-DT
OC: 12/07/03 R: 02
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, 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 Leaving
Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Ray D. Trotter (claimant) appealed a representative's January 12, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from EMCO Enterprises, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2004. The claimant participated in the hearing. Beth Kerry 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.

FINDINGS OF FACT:

The claimant started working for the employer on April 30, 2001. He worked full time in production in the employer's door manufacturing facility. His last day of work was November 13, 2003. He was incarcerated after getting off work that day and was released on December 4, 2003. He did not have any vacation time that would have covered the absence, and the employer's policies do not permit a leave of absence for incarceration. The employer considered his employment terminated for job abandonment effective November 20, 2003.

Since December 4, the claimant has not been under any employment restriction due to incarceration, has been making his weekly job contacts, and from time to time has secured some temporary employment.

REASONING AND CONCLUSIONS OF LAW:

The primary issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

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 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. However, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). Benefits are denied.

The secondary issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

A person who is in jail or in a work release program is not able and available for work. 871 IAC 24.22(2). However, since the establishment of his claim, the claimant has not been in jail or in a work release program. Once he has requalified, he is eligible for unemployment insurance benefits if he is otherwise eligible.

DECISION:

The representative's January 12, 2004 decision (reference 01) is affirmed. The claimant is deemed to have voluntarily left his employment without good cause attributable to the employer. As of November 14, 2003, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He is presently able and available for work.

ld/kjf