

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

DWAYNE R MURRAY
2914 E 41ST ST
DES MOINES IA 50317

3-D LAWN CARE
2905 E 41ST ST
DES MOINES IA 50317

Appeal Number: 05A-UI-04353-AT
OC: 01/02/05 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 Quit

STATEMENT OF THE CASE:

Dwayne R. Murray filed a timely appeal from an unemployment insurance decision dated April 15, 2005, reference 01, which denied benefits to him. After due notice was issued, a telephone hearing was held on May 9, 2005 with Rodney Davison participating for the employer, 3-D Lawn Care. Although Mr. Murray had provided a telephone number at which he could be contacted, the number was answered by a recording. The administrative law judge left instructions for Mr. Murray to call prior to the close of the hearing if he wished to participate. There was no further contact from Mr. Murray.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Dwayne R. Murray was employed by 3-D Lawn Care from mid-April 2004 until he stopped reporting for work in mid-August 2004. Two weeks later owner Rodney Davison learned from Mr. Murray that he had started working for a contractor. Further work was available had he not abandoned his job. The only wage records for Mr. Murray are his wages earned from 3-D Lawn Care.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the separation from employment with 3-D Lawn Care was a disqualifying event. It was.

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 has the burden to proof. See Iowa Code section 96.6-2. As noted above, Mr. Murray did not participate in the hearing. While benefits are generally awarded to an individual who resigns to accept other employment, benefits are withheld from individuals who resign in order to enter self-employment. See Iowa Code section 96.5-1-a and 871 IAC 24.25(19), respectively. Given the absence of wage credits after Mr. Murray's separation from employment with 3-D Lawn Care, the administrative law judge concludes that Mr. Murray resigned from employment to enter self-employment. Under these circumstances, benefits must be withheld.

DECISION:

The unemployment insurance decision dated April 15, 2005, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

kjf/tjc