

**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**

**ERIC J BLAKEMAN
1225½ RHOMBERG
DUBUQUE IA 52001**

**SAFETY EQUIPMENT LEASING CO
15 S MAIN ST
DUBUQUE IA 52003-7423**

**Appeal Number: 04A-UI-12591-SWT
OC: 10/31/04 R: 04
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:

The claimant appealed an unemployment insurance decision dated November 22, 2004, reference 01, that concluded he voluntarily quit employment without good cause. A telephone hearing was held on December 16, 2004. The claimant participated in the hearing. Julie Habercorn participated on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer from May 26, 1998, to June 9, 2004. The claimant voluntarily left employment on June 9, 2004 to work for Meisner Roofing. The claimant was informed and understood when he took the job with Meisner Roofing that Meisner Roofing was not deducting taxes from his compensation. Meisner Roofing has not reported any wages paid to the claimant to Iowa Workforce Development for unemployment

insurance purposes. The Agency has made no determination that the claimant was working for Meisner Roofing as an employee covered by the unemployment insurance law.

The claimant also quit employment because he was dissatisfied with his foreman's treatment of him. He and other employees had complained to the owner of the business, Clark Wolf, about the foreman two years before but Wolf did not do anything about the complaints. The claimant initially filed a two-week notice but then never returned to work or contacted the employer after June 9, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.25(19) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(19) The claimant left to enter self-employment.

The claimant argued that he was working as an employee for Meissner Roofing. He acknowledged, however, that Meissner Roofing did not withhold taxes from his pay and he was receiving a 1099 form instead of a W-2 form for income tax purposes. Meissner Roofing has not reported the claimant's wages to the Agency.

The claimant has not established that he was working in an employer-employee relationship when he worked for Meissner Roofing. If the claimant believes that he was working as an employee of Meissner Roofing, he should contact his local Workforce Development Center and

filed a Missing Wage Report stating that he was paid wages by Meissner Roofing that have not been reported to Agency. This will trigger an investigation into the employer-employee relationship. Unless and until the Agency determines the claimant was an employee of Meissner Roofing, the claimant will be disqualified from receiving unemployment insurance benefits. He has not established intolerable working conditions or other good cause for leaving employment.

DECISION:

The unemployment insurance decision dated November 22, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The disqualification should be imposed unless and until the Agency determines the claimant was an employee of Meissner Roofing. If this occurs, the claimant would be eligible for unemployment insurance benefits.

saw/tjc