

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

WILLIAM MORGAN
1510 – 1ST AVE APT 8
GRINNELL IA 50112

MARSHALLTOWN MGMT SYSTEMS INC
1224 S GILBERT ST
IOWA CITY IA 52240-4506

AMENDED

Appeal Number: 05A-UI-05787-ET
OC: 05-01-05 R: 02
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 Leaving
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 20, 2005, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held before Administrative Law Judge Julie Elder on June 17, 2005. The claimant participated in the hearing. Paul Hammell, District Manager, and Randy Smith, General Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time cook for Marshalltown Management Systems from May 14, 2004 to April 27, 2005. He was a no-call/no-show February 24, 2005, and received his first written warning. He called the employer April 27, 2005, and said he did not have his uniforms because he was washing clothes at his neighbor's house and the neighbor was apparently gone. The employer told the claimant there were uniforms available at the store and the claimant replied that he would be in but never showed up and the employer prepared a second written warning but the claimant did not receive it because he was a no-call no-show April 28, 29, 30 and May 2, 2005, and the employer considered him to have voluntarily quit his employment.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without 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(26) 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:

- (26) The claimant left to go to school.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out

that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated his intent to quit and acted to carry it out when he failed to call or report to work for five consecutive shifts. The claimant could have worked April 27, 2005, but chose not to wear the uniforms the employer had for him to wear or to just wear jeans as the employer suggested in order to get him to come to work regardless of his uniform. Additionally, while the claimant maintains he called the employer later that day to ask about the status of his job and was told he was not on the schedule and his employment was terminated, his testimony on that issue was not credible because the employer he stated fired him was not even working at that time and the employer had already prepared a second written warning, rather than a termination paper, in response to his absence of April 27, 2005. It is the claimant's burden to prove that his voluntary leaving was for a good cause attributable to the employer and he has failed to do so in this case. Iowa Code section 96.6-2. Consequently, the administrative law judge concludes the claimant has not met his burden of proof as defined by Iowa law. Therefore, benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The May 20, 2005, reference 02, decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$456.00.

je/tjc/pjs