

**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**

**THOMAS B COX
1619½ MIAMI
SOUTH BEND IN 46613**

**ALTER BARGE LINE INC
2117 STATE ST STE G50
BETTENDORF IA 52722-1400**

**Appeal Number: 04A-UI-12637-RT
OC: 12-28-03 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 Quitting
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Thomas B. Cox, filed a timely appeal from an unemployment insurance decision dated November 15, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 17, 2004 with the claimant participating. Randy Kirschbaum, Marine Manager, participated in the hearing for the employer, Alter Barge Line, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

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: The claimant was employed by the employer as a full-time mate from June 9, 1999 until he separated from his employment on June 21, 2004. The claimant had also been previously employed by the employer but quit and then was rehired on June 9, 1999. The claimant is ordinarily scheduled for 30 days on and 30 days off. The claimant's last day of work was March 12, 2004. He was then off work for a period of time and on or about March 18, 2004, the claimant was injured receiving a hernia while at home, which was unrelated to his employment. This required an operation. The claimant's physician sent the employer a doctor slip indicating that the claimant was going to be off work four to six weeks. The claimant was off work for awhile. The claimant's physician then provided the employer a doctor slip dated May 12, 2004 indicating that the claimant would be released for work on May 17, 2004. However, the claimant did not return to work at that time. The claimant's house burned down on or about April 28, 2004 and on May 17, 2004 he called the employer and spoke to Kim and asked for some time off and this was approved. The claimant then worked on replacing his house and then went to Indiana with his cousin. His cousin's mother was ill and the claimant went to Indiana and then remained in Indiana for quite some time. In the meantime, the claimant never notified the employer of his status or contacted the employer in any way.

The employer scheduled a return-to-work physical for the claimant on June 17, 2004 when the employer learned that the claimant had been released to work. The claimant did not contact the employer so the employer sent the claimant a registered letter return receipt requested dated June 16, 2004, indicating that the employer had been attempting to call the claimant and had not been able to do so. The letter further informed the claimant that work remained for him and was available June 17, 2004. The employer also rescheduled the return-to-work physical for June 21, 2004 and informed the claimant that he needed to be at that physical. The letter then said if the claimant passed the physical, he would return to work June 22, 2004. The letter finally said if the employer did not hear from the claimant by June 21, 2004, he would be considered to have quit. This letter was received by the claimant's wife. However, the claimant's wife did not know where the claimant was or at least could not contact him while he was in Indiana. In addition, the employer's crew dispatcher called and spoke to the claimant's wife on June 14, June 15 and June 16, 2004. The claimant's wife informed the crew dispatcher that he was out of state apparently working at another job. The claimant was at that time still in Indiana. While employed by the employer, the claimant had been living in Illinois. When the claimant finally returned to Illinois on June 24, 2004, the grandmother of a coworker told the claimant's wife who then told the claimant that if he was not back at work by June 21, 2004, he would be discharged. However, no one from the employer ever told the claimant that he was fired or discharged. The letter as noted above informs the claimant that he would be treated as a quit if he did not return to work on June 21, 2004. Ordinarily, barge crew members are supposed to call the employer six days before the start of their next 30-day working period but the claimant never did so. In fact, the only time the claimant notified the employer was on or about May 17, 2004 when he asked for some time off because his house had burned.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.

2. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was at relevant times not able, available, and earnestly and actively seeking work. The administrative law judge concludes that the claimant is not ineligible for this reason but is disqualified to receive unemployment insurance benefits because of his separation from his 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.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant left his employment voluntarily effective June 21, 2004 when the claimant had failed to contact the employer for over a month after having an injury, a hernia, at home and unrelated to his employment. The claimant maintains that he was discharged when he was told by his wife that if he did not return to work on June 21, 2004, he would be discharged and his wife learned this from the grandmother of a coworker and the grandmother of the coworker learned it from the grandchild. However, there is no evidence that any one at the employer ever told the claimant that he was fired or discharged. Rather, the registered letter dated June 16, 2004 clearly informed the claimant that if he did not show up for work, he would be treated as a voluntary quit. This letter was received by the claimant's wife. Under the circumstances here, the administrative law judge must conclude that the claimant left his employment voluntarily. After approximately May 17, 2004 when he called the employer and spoke to Kim and asked for time off because his house had burned, the claimant never thereafter contacted the employer. The claimant's house had burned on April 28. The claimant had over one and one-half months to make arrangements for a house and the claimant testified he got a mobile home. The administrative law judge does not believe it takes a month and one-half to get a mobile home. Further, the claimant testified that shortly after his house burned, he went to his cousin's house in Indiana and was there for quite some period of time because the mother of his cousin was ill. Even the claimant concedes that this was wrong. While the claimant was in Indiana, apparently he was not able to be contacted by his wife. The claimant knew that he was employed by the employer and knew that he was expected to go back to work and knew that he had been released to work from May 17, 2004 but yet the claimant never bothered to notify the employer for over a month and, in fact, when he learned that he had been terminated, never notified the employer thereafter. The administrative law judge must conclude under the facts here that the claimant's actions were totally unreasonable in view of his knowledge of his employment with the employer and his failure to contact the employer or maintain contact with his wife so that he could get messages from the employer is a voluntary quit. Accordingly, the administrative law judge concludes that the claimant voluntarily quit effective June 21, 2004 when he did not return to work as per the letter dated June 16, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant simply testified that he was first injured at home receiving a hernia which was

unrelated to his employment and he was off work until May 17, 2004 when he was released. The claimant then testified that his house burned down on April 28, 2004. The administrative law judge is not without sympathy for the claimant but the claimant had over one and one-half months to make arrangements for housing before he was to return to work and never returned to work. The claimant testified that he called the employer on May 17, 2004 to ask for additional time off to deal with house burning but even the claimant admits he did not say how much time. The claimant took over a month. However, the claimant was not working on replacing his house during that period of time. Rather, he was in Indiana with his cousin and apparently was there without being able to be contacted by his wife. The administrative law judge must conclude on the evidence here that all of these reasons are directly related to the claimant and not to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. The administrative law judge must conclude that the claimant simply just never went back to work in a timely fashion and never notified the employer or kept in any kind of contact with the employer even though he was released to work by his physician on May 17, 2004 and had ample opportunity to make arrangements for a replacement home. Finally, the claimant never returned to the employer and offered to go back to work. The claimant relied upon a statement from a coworker to the coworker's grandmother to the wife to the claimant that he had been discharged. However, the letter dated June 16, 2004 clearly states that the claimant would be considered a voluntary quit and this letter was received by the claimant's wife. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

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".

The administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code section 96.4-3 or is otherwise excused. New Homestead vs. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that at relevant times he was able, available, and earnestly and actively seeking work. First of all, the evidence indicates that the claimant has been released to return to work. The claimant testified that he is seeking work in Indiana. There appears to be no restrictions on his availability for work. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits for this reason. However, as noted above, the administrative law judge concludes that the claimant is

disqualified to receive unemployment insurance benefits because he left his employment voluntarily without good cause attributable to the employer.

DECISION:

The representative's decision of November 15, 2004, reference 01, is affirmed. The claimant, Thomas B. Cox, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. The claimant is able, available, and earnestly and actively seeking work.

tjc/b