

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

STEVE P CUPERUS
404 E INDIANA AVE
GEORGE IA 51237

PERFORMANCE FEEDERS INC
DBA PERFORMANCE FEEDERS
226 EIGHTH AVE
SHELDON IA 51201

Appeal Number: 04A-UI-00146-RT
OC: 10-19-03 R: 01
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-g – Voluntary Quitting (Requalification by Earning Ten Times the Claimant's Weekly Benefit Amount)

STATEMENT OF THE CASE:

The claimant, Steve P. Cuperus filed a timely appeal from an unemployment insurance decision dated December 26, 2003, reference 01, denying unemployment insurance benefits to him because he had not earned ten times his weekly benefit amount since a disqualifying separation from the employer, Performance Feeders, Inc., doing business as Performance Feeders, on October 16, 2003. After due notice was issued, a telephone hearing was held on January 27, 2004 with the claimant participating. Melanie DeGroot was available to testify for the claimant but not called because her testimony was not necessary and would have been repetitive on the only issue presented by the appeal. Gywen Hoogendoorn, Owner, participated

in the hearing for the employer. 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: By decision dated November 4, 2003, the claimant was determined to be disqualified to receive unemployment insurance benefits because he voluntarily left his employment with the employer herein, Performance Feeders, Inc., doing business as Performance Feeders, on October 16, 2003. That decision does not yet appear to have been appealed. Since separating from Performance Feeders on or about October 16, 2003, the claimant has earned only approximately \$800.00 from Northwest Iowa Landscape for whom he started work on November 3, 2003 and ended employment on November 17, 2003. The claimant's weekly benefit amount for unemployment insurance benefit purposes is \$262.00 per week. Ten times that amount would be \$2,620.00.

Pursuant to his claim for unemployment insurance benefits filed effective October 19, 2003, the claimant has received no unemployment insurance benefits but has filed weekly claims for each week since that time beginning with benefit week ending October 25, 2003 but records do not reflect any earnings or wages earned by the claimant during that period.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant has requalified to receive unemployment insurance benefits following a disqualifying separation from the employer herein on October 16, 2003, by earning ten times his weekly benefit amount of \$262.00. The claimant has not requalified to receive unemployment insurance benefits following that disqualifying separation.

Iowa Code Section 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The only issue before the administrative law judge, because it is the only issue set out on the notice of appeal, is whether the claimant has requalified to receive unemployment insurance benefits by earning at least ten times his weekly benefit amount of \$262.00 since a disqualifying separation from the employer herein on October 16, 2003. The administrative law judge concludes that the claimant has not. The claimant credibly testified that he has earned only approximately \$800.00 since separating from the employer herein on or about October 16, 2003. These earnings were from Northwest Iowa Landscape for whom the claimant worked from November 3, 2003 to November 17, 2003. This is far less than ten times the claimant's

weekly benefit amount of \$262.00 or \$2,620.00. Accordingly, the administrative law judge concludes that the claimant has not requalified to receive unemployment insurance benefits following his disqualifying separation from the employer.

The claimant stated at the hearing that he intended to appeal the decision that disqualified him from receiving unemployment insurance benefits because of his separation from the employer on October 16, 2003. That decision was dated November 3, 2003 and does not appear to have been appealed yet. The administrative law judge does not have jurisdiction to reach that issue because it was not on the notice sent to the parties for this hearing. A new appeal should be established appealing the decision dated November 3, 2003, reference 01, disqualifying the claimant because of a separation, a voluntary quit without good cause attributable to the employer, on October 16, 2003, from the employer herein, under Iowa Code Section 96.5-1. That appeal should also address whether the claimant's appeal itself is timely under Iowa Code Section 96.6-2. Finally, that appeal should address whether the claimant is and/or was, at any and all material times hereto, able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3.

DECISION:

The representative's decision of December 26, 2003, reference 01, is affirmed. The claimant, Steve P. Cuperus, is not entitled to receive unemployment insurance benefits because he has not requalified by earning ten times his weekly benefit amount of \$262.00 or \$2,620.00 since the disqualifying separation on October 16, 2003 from the employer herein, Performance Feeders, Inc., doing business as Performance Feeders, as determined by a decision dated November 4, 2003, reference 01, for a different benefit year. A new appeal shall be established appealing this disqualifying separation and, further, determining whether the claimant's appeal is timely and, finally, determining whether the claimant is ineligible to receive unemployment insurance benefits because he is and/or was not able, available, and earnestly and actively seeking work at any and all material times hereto.

tjc/b