

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 B THOMPSON
PO BOX 23
WALCOTT IA 52773

HOME DEPOT USA INC
C/O TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-04928-HT
OC: 04/10/05 R: 04
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 – Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Home Depot, filed an appeal from a decision dated April 28, 2005, reference 01. The decision allowed benefits to the claimant, Eric Thompson. After due notice was issued a hearing was held by telephone conference call on May 31, 2005. The claimant provided a telephone number of 563/529-0033. That number was dialed at 2:02 p.m. and the only response was a voice mail, which clearly identified “Eric.” A message was left indicating the hearing would proceed without his participation unless he called the toll-free number prior to the close of the record. By the time the record was closed at 2:09 p.m. the claimant had not responded to the message and did not participate. The employer participated by Human Resources Manager Kristine Rubalcava.

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: Eric Thompson was employed by Home Depot from November 3, 2003 until March 27, 2005. He was a full-time sales associate. At the time he was hired the claimant received a copy of the employee handbook, which sets out the employer's attendance policy. Employees are notified that being no-call/no-show to work for three days will be considered a voluntary quit.

Mr. Thompson's last day of work was March 20, 2005. He was absent on March 21, and 22, 2005, but he called in to say he was sick. On March 23 and 24, 2005, he was not scheduled to work. For his scheduled shifts on March 25, 26 and 27, 2005, he was no-call/no-show and was considered a voluntary quit.

Eric Thompson has received unemployment benefits since filing a claim with an effective date of April 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was absent from work without notifying the employer of his absence or the reason he would not be into work for three days. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and he is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 28, 2005, reference 01, is reversed. Eric Thompson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$900.00.

bgh/pjs