

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

MAHLON CONRAD
1485 CEDAR TREE CT
SWISHER IA 52338

ALL SEASONS EQUIPMENT INC
2275 – 16TH AVE SW
CEDAR RAPIDS IA 52404-1614

Appeal Number: 05A-UI-06173-HT
OC: 05/15/05 R: 03
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, All Seasons Equipment, Inc. (All Seasons), filed an appeal from a decision dated June 3, 2005, reference 01. The decision allowed benefits to the claimant, Mahlon Conrad. After due notice was issued a hearing was held by telephone conference call on June 29, 2005. The claimant participated on his own behalf. The employer participated by Business Operations Manager Julie Nalley and Human Resources Consultant Ken Viggers.

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: Mahlon Conrad was employed by All Seasons from

October 11, 2004, until April 29, 2005. He was hired as a full-time sales person. His pay structure was 30 percent of gross margin on all sales he completed and, until January 5, 2005, a \$500.00 per week draw.

The claimant did not meet the sales expectations of the employer and, at a meeting on January 13, 2005, he was advised he would be put on another 90-day probation and his \$500.00 per week draw would be continued.

On April 29, 2005, the claimant was advised by the employer his draw was being reduced to \$400.00 per week because he had still not met the necessary sales goals. At that point the claimant announced he was quitting and left the office.

Mahlon Conrad has received unemployment benefits since filing a claim with an effective date of May 15, 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.

There was no change in the contract of hire that caused the claimant to quit. From the beginning he knew the commission percentage and that his draw of \$500.00 per week was not permanent. The employer did allow the draw to continue past the initial 90-day period, only in order to help the claimant since his sales were not yet at a productive level. But again, there was no guarantee it would continue indefinitely.

The claimant's decision to quit was based on the employer reducing his draw because his sales were not yet at an acceptable level. Even though the employer could have stopped the draw altogether, it did not. The claimant's decision to quit was apparently based on his belief he would never be able to reach an acceptable sales level to earn the amount of money represented by the draw. There was no change in the original contract of hire and good cause attributable to the employer does not exist. The claimant 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 June 3, 2005, reference 01, is reversed. Mahlon Conrad 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 \$2,004.00.

bgh/kjw