

**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**

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Section 96.5(1) - Quit

**STATEMENT OF THE CASE:**

The claimant, Robert Powell, filed an appeal from a decision dated February 23, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 4, 2006. The claimant participated on his own behalf and was represented by Attorney Gerald Kucera. The employer, Gazette Communications, participated by Production Manager Craig Carmody, Team Leader Phil High, Benefits Manager Terry Zaruba and was represented by Attorney Iris Muchmore. Exhibits One, Two, Three, Four and A were admitted into the record.

**Appeal Number: 06A-UI-02747-HT  
OC: 02/05/06 R: 03  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

#### 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: Robert Powell was employed by Gazette Communications from November 25, 2002 until November 28, 2005. He was a full-time press operator.

The claimant sustained an injury some time in June 2005. There has been no determination whether it is a work-related or non-work-related injury. He returned to work on September 28, 2005, with restrictions which were updated October 26, 2005, with greater limitations. On November 2, 2005, the claimant met with Production Manager Craig Carmody and Assistant Press Manager Heather Emerson to discuss his restrictions and job duties. He was placed back on FMLA as of that date.

Benefits Manager Terry Zaruba sent the claimant a letter on November 3, 2005, summarizing the meeting and giving him further information on the overall situation with his health, leave of absence and fringe benefits. The letter advised him the FMLA would expire on November 8, 2005, but he was being granted an additional 30 days of leave to end on December 6, 2005. At that time, or earlier according to any updated restrictions, the situation would be reviewed.

He was advised he could apply for long-term disability as his short-term disability was ending November 8, 2005, and the paperwork for that would be sent to him the following week. That was the extent of the leave available to him. The letter notified him if, at the end of the available leave, he was not able to return to full duty and fulfill the essential functions of his position as press operator, he would not longer qualify to be in that position and would be "subject to termination."

On November 28, 2005, the claimant came into the facility and began removing his personal belongings. Team Lead Phil High encountered him in the locker room at which time Mr. Powell began to exclaim, using some inappropriate language, that he had been fired and he was going to sue the employer, and generally expressing his discontent. Mr. High went to Mr. Carmody who met the claimant as he was leaving the locker room.

The production manager asked if the claimant was telling people he had been fired and he said he had according to the letter of November 3, 2005. He asked the claimant if he had received any additional paperwork since that letter because he was not aware any decision had been made yet as the matter would be reviewed on December 6, 2005, and that date had not arrived. Mr. Powell said his doctor had not changed any of his restrictions and he was not well yet. He handed in his entry card and locker keys and walked out.

#### 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.

The claimant's position is that he suffered a work-related injury and was discharged because he was not able to perform the essential functions of the job. He points to the letter of November 3, 2005, saying he would be "subject to discharge" as of December 6, 2005, if he was not able to fully return to work as a press operator. However, the claimant overlooks the portion of the letter which said the situation would be reviewed on December 6, 2005.

The end date had not arrived and the employer was not able to make any determination due to the failure of the claimant to provide any current medical documentation as of that date. It is entirely possible he would have been discharged as of that date, or he could have been eligible for long-term disability or any position within the company that did not violate any of his restrictions.

Mr. Powell elected to end his employment rather than meet with the employer at the end of his leave. There is nothing in the record to establish he was discharged, the evidence only points to a voluntary resignation. Such circumstances were addressed in LaGrange v. IDJS, (Unpublished, Iowa App. 1984) where the court ruled where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer

The claimant submitted a letter from Dr. Richard Neiman dated February 18, 2006, regarding an independent medical evaluation for the claimant. It was admitted for any relevance it might have but the administrative law judge does not consider the contents to be relevant after all. The exam was done and the report submitted two to three months after the separation. This information was not in existence as of November 28, 2005, and it cannot be known whether the information was accurate as of that date. It therefore did not contribute to the separation from employment.

#### DECISION:

The representative's decision of February 23, 2006, reference 01, is affirmed. Robert Powell is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/tjc