

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

TERRY M VICKERY  
401 ALLEN ST  
LAURENS IA 50554

RADIO SHACK CORPORATION  
c/o RIVERFRONT  
CAMPUS MAILSTOP CF#5-#313  
300 RADIOSHACK CIRCLE  
FORT WORTH TX 76102-1964

Appeal Number: 05A-UI-11390-RT  
OC: 09-25-05 R: 01  
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, 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)

Section 96.5-1 – Voluntary Quitting  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Radio Shack Corporation, filed a timely appeal from an unemployment insurance decision dated October 24, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Terry M. Vickery. After due notice was issued, a telephone hearing was held on November 22, 2005 with the claimant participating. Steven Duple, manager of the employer's store in Fort Dodge, Iowa, where the claimant was employed, 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. Although not set out on the Notice of Appeal, the parties permitted the administrative law judge to take evidence on, and

decide, if necessary, whether the claimant is overpaid unemployment insurance benefits under Iowa Code section 96.3-7.

#### 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 sales associate from February 2, 2004 until he separated from his employment on July 31, 2005. Because the claimant was moving from Fort Dodge, Iowa, to Laurens, Iowa, and because he had certain personal matters to attend to, the claimant took a week of vacation for week ending July 15, 2005. Because the claimant required additional time the claimant contacted the employer and was given another week off for week ending July 22, 2005. This was still not enough time for the claimant so he contacted the employer and was given yet a third week off week ending July 29, 2005. The employer permitted the claimant to be off for those three weeks. The claimant returned to work on July 30, 2005, which was a Saturday. He came to work to assist in inventory. At that time the claimant was told that he was going to be moved from full-time to part-time but this was acceptable to the claimant and he did not object. What was said about the claimant's work schedule was uncertain. Because the claimant had been off of work for three weeks he was not on the schedule. The next day, Sunday, July 31, 2005, the claimant again worked for the employer helping with inventory. The claimant was not given a schedule for future work at that time nor did he ask for any such schedule. However, because the claimant was not given any such schedule, he never contacted the employer or returned to the employer and offer to go back to work. The claimant still has not contacted the employer and offer to go back to work.

The employer's witness, Steven Duple, manager of the employer's store in Fort Dodge, Iowa, where the claimant was employed, attempted to call the claimant on his cell phone number but got a message that the cell phone was turned off. Mr. Duple was never able to reach the claimant. The claimant never attempted to contact Mr. Duple. The claimant had never expressed any concerns to Mr. Duple about his working conditions nor did he ever indicate or announce an intention to quit. Pursuant to his claim for unemployment insurance benefits filed effective September 25, 2005, the claimant has received unemployment insurance benefits in the amount of \$781.00 as follows: \$222.00 per week for three weeks from benefit week ending October 1, 2005 to benefit week ending October 15, 2005, and \$115.00 for benefit week ending October 22, 2005 (earnings \$162.00). The records show no other weekly claims or payments.

#### 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 overpaid unemployment insurance benefits. 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 first issue to be resolved, and the issue that is crucial to the resolution of this case, is the character of the separation. The employer maintains that the claimant left his employment voluntarily or quit when he failed to return to work on or after July 31, 2005 and never contacted the employer. The claimant maintains that he was discharged but concedes that no one ever told him that he was fired or discharged. After being off for three weeks as set out in the Findings of Fact, one week of vacation and two additional weeks requested by the claimant to take care of moving and personal matters, the claimant returned to work on July 30, 2005 which was a Saturday. The claimant assisted in inventory. The claimant also worked Sunday, July 31, 2005 assisting with inventory. On July 30, 2005, the claimant was informed that he would be moved from full-time to part-time. This was acceptable to the claimant and he had no objections. The evidence is unclear as to exactly what was said about the claimant's work schedule. The claimant maintains that he was told that he would be given a work schedule the next day, Sunday, July 31, 2005. The employer's witness, Steven Duple, manager of the employer's store in Fort Dodge, Iowa, where the claimant was employed, denied that stating that he told the claimant to call him the next day, Monday, August 1, 2005 to check on his schedule. Mr. Duple testified that he had no time on July 30 and 31, 2005 to make out a schedule because he had to do inventory. The administrative law judge is constrained to conclude that the testimony of Mr. Duple is more credible than that of the claimant and must conclude that Mr. Duple told the claimant to call him the next day, Monday, August 1, 2005, to inquire about a schedule but the claimant did not do so. In fact the claimant never contacted the employer thereafter nor did the claimant ever offer to return to work. Mr. Duple attempted to call the claimant at the cell phone number he had for the claimant but whenever he did so he got a message that the cell phone was turned off. Mr. Duple was unable to reach the claimant although he attempted to do so.

The claimant never attempted to contact Mr. Duple. The claimant testified that he thought Mr. Duple would call him but Mr. Duple did not. This is not entirely credible. If the claimant thought that Mr. Duple was going to call him and did not then the claimant had some responsibility to check with Mr. Duple about his job. In fact the claimant testified that he did not file for unemployment insurance benefits for almost two months because he was waiting to hear from Mr. Duple. This does not make any sense to the administrative law judge. If the claimant was expecting to hear from Mr. Duple and did not he should have contacted Mr. Duple. Mr. Duple's credible testimony was that the claimant's cell phone was turned off or not working. The claimant should have realized there was some problem and called Mr. Duple but he did not. The claimant concedes that no one ever told him that he was discharged or fired. On the evidence here, the administrative law judge must conclude that the claimant left his employment voluntarily and was not discharged. There is no evidence that anyone ever told the claimant that he was discharged or fired. The claimant simply never returned to work and the administrative law judge believes that this demonstrates both an intention to terminate the employment relationship and is an overt act to carry out that intention as required for a voluntary quit by Local Lodge #1426 v. Wilson Trailer, 289 N.W. 2d 608, 612 (Iowa, 1980). Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on July 31, 2005 when he never returned to work thereafter or contacted the employer. 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 really gave no reasons for his voluntary quit. There was some evidence that the claimant was going to be moved from full-time to part-time, but the claimant testified that the hours were never clear nor were they discussed and that the claimant accepted this and did not object to the change from full-time to part-time. It does not appear that this was a reason motivating the claimant's quit. The claimant also conceded that he did take long lunch breaks, which was one of the reasons for the move from full-time to part-time. The claimant testified that he did so for a doctor's appointment for his children but he should have gotten permission from the employer and taken time off rather than long lunch breaks. The administrative law judge specifically notes that the employer was more than generous with the claimant by giving him one week of vacation and then two additional weeks off to move and to take care of personal matters. The employer's generosity should have been met with more concern by the claimant about his job and some contact initiated by the claimant but none was forthcoming from the claimant. The claimant never expressed any concerns to Mr. Duple about his working conditions nor did he ever indicate or announce an intention to quit if any problems he was having were not addressed by the employer. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective July 31, 2005, 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 96.3-7 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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$781.00 since separating from the employer herein on or about July 31, 2005 and filing for such benefits effective September 25, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of October 24, 2005, reference 01, is reversed. The claimant, Terry M. Vickery, 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. He has been overpaid unemployment insurance benefits in the amount of \$781.00.

kkf/kjw