

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

MARTY BOX
5010 N LIMBERLOST LN
BLOOMINGTON IN 47408-9624

RESCARE INC
HUMAN RESOURCES ADMINISTRATOR
301 W BURLINGTON ST
FAIRFIELD IA 52556

Appeal Number: 06A-UI-05679-BT
OC: 04/30/06 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 – Voluntary Leaving
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Rescare, Inc. (employer) appealed an unemployment insurance decision dated May 23, 2006, reference 02, which held that Marty Box (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 19, 2006. The claimant participated in the hearing. The employer participated through Cammy Cooper, Human Resources/Workers' Compensation Administrator.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time life skills specialist working in direct support care from January 7, 2005 through May 4, 2006, when he voluntarily quit his employment due to dissatisfaction with the working environment. He contends he quit his employment due to Medicare/Medicaid fraud, medication errors, abuse investigations and the employer's failure to pay overtime. The claimant was not directly involved with any of the alleged problems and did not have actual knowledge of the circumstances surrounding each issue. Likewise, he was not aware of the employer's actions in handling any possible problems but made assumptions based on the little information he did have. The only issue with which the claimant had personal knowledge was his claim that the employer failed to pay overtime. However, this was a non-issue since the employer only paid overtime if it was initially preauthorized and the employee is not paid anything extra if it is seven minutes or less after the hour. It appears the claimant was upset because he was not paid overtime for time that was not preauthorized.

The claimant filed a claim for unemployment insurance benefits effective April 30, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when on May 5, 2006, he told his employer he no longer worked there.

The claimant issued serious allegations against the employer and claims that he quit due to intolerable and detrimental working conditions. The evidence he provided falls far short of his allegations. He does not have even the basic information about the circumstances he alleges to be fact and makes a lot of unwarranted assumptions. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden and benefits are denied.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated May 23, 2006, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$947.00.

sdb/cs