

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

JOHN F HEISTERKAMP  
710 MAIN ST  
BOX 14  
BLENCOE IA 51523

AMERICAN EXPRESS FINANCIAL  
ADVISORS INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03977-DWT  
OC 02/15/04 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 are 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 Quit  
Section 96.307 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

American Express Financial Advisors, Inc. (employer) appealed a representative's March 29, 2004 decision (reference 01) that concluded John F. Heisterkamp (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had voluntarily quit his employment for reasons that qualified him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2004. The claimant participated in the hearing. Dick Giudice, Bob Sipes, and Dave Keller appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

#### FINDINGS OF FACT:

The claimant started working for the employer on October 29, 2003. The employer hired him to sell financial plans. Sipes and Keller supervised the claimant.

One of the claimant's job duties required him to make phone calls in attempt to sell financial plans to consumers. When the claimant started his training, other employees were around him to give him support. The claimant liked the support he initially received so he could get his questions answered and also relieve some stress of the job by talking to a co-worker. The claimant became increasingly dissatisfied with the work environment. He noticed employees "sniping" at one another and how they acted unprofessional by talking loud and engaging in "locker room-type" talk. The claimant concluded he had to be very careful as to who he talked to so other employees would not get mad at him. No one harassed the claimant.

The claimant talked to Sipes and Keller on a regular basis. For three weeks in December, the claimant did not have his weekly scheduled meeting with Keller or Sipes. The claimant assumed he was being ostracized for telling Keller in early December about the harassing, chastising and locker room talk going on in the office.

The claimant did not like the way other employees treated one another. In early December 2004, the employer addressed the issue of professionalism at work and told employees that the employer would not tolerate locker-room talk. A district manager even addressed professionalism at work at another group meeting. The claimant did not believe the employer's method to address his concerns was effective when a week later a district manager gave employees the same message.

On December 24, 2003, the claimant became offended when his supervisor made comments about how a male employee refused to make any calls on Christmas Eve. The male employee was a former priest, who was the brunt of gay-priest jokes on December 24. The claimant did not report the offensive comments to anyone. Instead, on December 27, 2003, the claimant submitted his resignation, which was effective immediately. The claimant told the employer he was resigning because he could not take the stress any longer.

The claimant established a claim for unemployment insurance benefits during the week of February 15, 2004. He filed claims for the weeks ending February 21 through May 1, 2004. He received or was entitled to receive his maximum weekly benefit amount of \$311.00 each week he filed a claim. Some the benefits the claimant was entitled to receive were used to offset a previously established overpayment.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant voluntarily quit his employment when he resigned on December 27, 2003. When a

claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits without good cause if he leaves because of dissatisfaction with the work environment. 871 IAC 24.25(21). However, if a claimant voluntarily quits due to intolerable or detrimental working conditions, the law presumes he has quit with good cause. 871 IAC 24.26(4).

The facts show the claimant did not like his work environment. The claimant acknowledged the stress level of his work was high. Even though the employer addressed professionalism at work, the claimant failed to communicate how some people treated other employees, not the claimant, offended him. If the claimant's interpretation of what was said on December 24 is accurate, the claimant could have reported the offensive behavior directed to another employee to the employer. The evidence does not support the claimant's conclusion that the employer would do nothing since the employer had already told employees that locker room talk at work would not be tolerated.

Based on the claimant's complaints, the facts show how dissatisfied the claimant was with his job. The claimant established compelling personal reasons for quitting and probably made the best decision for his well-being. For unemployment insurance purposes, the claimant did not establish intolerable working conditions. The claimant quit because he was not happy about the work environment, which does not qualify him to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 21 through May 1, 2004. The claimant has been overpaid a total of \$3,421.00 in benefits he received or were used to offset a previously established overpayment.

#### DECISION:

The representative's March 29, 2004 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of February 15, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending February 21 through May 1, 2004. He has been overpaid a total of \$3,421.00 in benefits he received for these weeks.

dlw/b