

**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**

**ALICE J BERGER
1515 – 31ST ST
DES MOINES IA 50311**

**BRIDGESTONE/FIRESTONE NORTH
AMERICAN TIRE
c/o TALX UCM SERVICES INC
PO BOX 283
SAINT LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-00252-S2T
OC: 06/12/05 R: 02
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 Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Bridgestone/Firestone (employer) appealed a representative's January 3, 2006 decision (reference 01) that concluded Alice Berger (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 24, 2006. The claimant did provide a telephone number but could not be reached at that number. Therefore the claimant did not participate. The employer participated by Robert Fuller, Supervisor. After the hearing the claimant contacted the administrative law judge indicating problems with receiving the telephone call. The hearing was reopened and the matter set for telephone conference on February 13, 2006, at 8:00 a.m. The parties were instructed to provide

telephone numbers were they could be reached for the re-hearing. Neither party was available at the time of the hearing on February 13, 2005. The administrative law judge used the testimony provided by the employer on January 24, 2006, to make her decision.

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 hired on September 14, 1998, as a full-time factory laborer. The claimant last day worked was October 6, 2005. The claimant was taking accident and sickness benefit. As a requirement of taking this benefit the claimant had to remain in contact with the employer and provide documentation.

On November 9, the employer sent the claimant a certified letter allowing the claimant 14 days to complete the paperwork or she would be considered to have voluntarily quit work. The claimant failed to retrieve the certified letter. On November 22, 2005, the employer sent the claimant another certified letter allowing the claimant five days to complete the paperwork or she would be considered to have voluntarily quit work. The claimant again failed to sign for the certified letter. On November 29, 2005, the employer sent a third certified letter indicating it had accepted the claimant's voluntary quit. The letter was signed for but the claimant made no contact with the employer. Continued work was available to the claimant had she not resigned.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her actions. She stopped communicating with the employer and did not return to work. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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 benefits in the amount of \$2,338.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's January 3, 2006 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,338.00.

bas/pjs