

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

DAVID D BAKER
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DES MOINES IA 50312-3729

CORNERSTONE ACCEPTANCE CORP
1001 OFFICE PARK RD #320
WEST DES MOINES IA 50265

AMENDED
Appeal Number: 06A-UI-02012-DT
OC: 01/15/06 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party request the Appeals Section to *reopen the record* at the address listed at the top of this decision, or 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 - Layoff

STATEMENT OF THE CASE:

David D. Baker (claimant) appealed a representative's February 15, 2006 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Cornerstone Acceptance Corporation (employer). Initial hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on March 8, 2006. Neither party responded to the hearing notice, and on March 14, 2006 a decision was issued based upon a review of the record that allowed for reopening of the record upon a showing of good cause. The claimant responded and reported

that he had not received the notice of the March 8 hearing until after the fact and that it appeared to have been damaged in the mail process. The administrative law judge issued an order to reopen the record, and after new hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2006. The claimant participated in the hearing. The employer again did not respond to either the order to reopen the record or the new hearing notice, and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2004. He worked full time as a loan officer in the employer's mortgage company. His last day of work was July 15, 2005.

The morning of July 13, 2005 the owner had a brief discussion with the claimant inquiring as to whether he desired to continue in his employment with the business, to which the claimant responded that yes, he did. He then left for a client meeting. When he returned, he learned that almost half of the employees in the office had been laid off. When he attempted to access his computer, he discovered that he had been "locked out." When he asked another employee what that meant, he was told he would have to talk to the owner.

The claimant was unable to reach the owner in the office, so he left and sent the owner an email from home reporting that he was locked out of his computer and so unable to work. He asked that the owner contact him with regard to his work status. He did not immediately hear back from the owner, but he was unable to get into his computer either of the next two days, so again he went home. He received a commission check that did not clear the bank, and so included in another email to the owner an inquiry as to replacement of that check. The owner did respond to the email to address the question of the replacement of the commission check, but never responded as to the claimant's employment status. The claimant then determined that he was laid off and began to pursue other business opportunities.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit.

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.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying

out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The representative's decision concluded that the claimant was not discharged but that he quit. The administrative law judge concludes the evidence does not support the conclusion that the claimant voluntarily quit. Iowa Code §96.6-2. As the separation was not a voluntary quit, it must be treated as another form of separation for purposes of unemployment insurance. 871 IAC 24.26(21).

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The claimant was willing to work but no work was available for him. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The representative's February 15, 2006 decision (reference 03) is reversed. The claimant did not voluntarily quit and the employer did lay off the claimant. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/kjw/pjs