

**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**

**GEOFFREY DREMME
1765 SOUTH GRANDVIEW AVE
DUBUQUE IA 52003**

**VENDORS UNLIMITED CORP
10554 RT 52 N
DUBUQUE IA 52001**

**Appeal Number: 05A-UI-07974-ET
OC: 06-26-05 R: 04
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:

The employer filed a timely appeal from the July 25, 2005, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held before Administrative Law Judge Julie Elder on August 17, 2005. The claimant participated in the hearing. Mike Asche, General Manager, participated in the hearing on behalf of the employer.

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 service technician in the can

crushing area for Vendors Unlimited from April 26, 2004 to June 1, 2005, when he resigned. He sustained a work-related injury August 31, 2004, when he was working as a route driver. The claimant received worker's compensation and was released with restrictions in November 2004. The employer had no light-duty work available so on approximately November 17, 2004, the claimant transferred to Lime Rock Springs Company, which is a separate company with the same ownership. It was the claimant's decision to stay or go to Lime Rock Springs, who could only provide him part-time employment crushing cans. He was released from medical treatment on March 14, 2005, with permanent restrictions but never provided the medical release to his employer. The service technician position requires employees to be able to lift over 35 pounds and the claimant was limited to lifting 35 pounds from his knee to his chest and 20 pounds from his chest to eye level. The claimant resigned from his position since he believed the employer had hired someone else in his original position.

The claimant filed a claim for unemployment insurance benefits effective June 26, 2005, and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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 demonstrated his intent to quit and acted to carry it out when he gave his notice of resignation. After sustaining a work-related injury, the claimant was on light duty and transferred to a sister company. He was subsequently released from medical treatment with permanent restrictions but never provided the employer with this release prior to resigning his employment. The claimant quit his employment because he believed the employer had hired someone else to perform his original job. 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 administrative law judge concludes the claimant has not satisfied that burden. Therefore, 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.

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 July 25, 2005, reference 02, decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and 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 \$2,368.00.

je/s