

**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**

**JEANETTE GALLO
BOX 212
WALCOTT IA 52773**

**BORDER STATES CONTRACT SERVICE
INC
PO BOX 393
TIFFIN IA 52340-0393**

**Appeal Number: 06A-UI-00596-JTT
OC: 12/04/05 R: 04
Claimant: Respondent (1)**

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
871 IAC 24.1(113)(a) – Layoff

STATEMENT OF THE CASE:

Border States Contract Service filed a timely appeal from the January 6, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 9, 2006. Operations Manager Frederick (Rick) Fischer represented Border States Contract Service. Claimant Jeanette Gallo participated with the assistance of sign language interpreter Renee Partlow. Ms. Gallo presented further testimony through Dennis Evans, who testified with the assistance of the interpreter. Exhibits One through Four and A through D were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jeanette Gallo was employed by Border States Contract Services as part-time maintenance worker until August 27, 2005. Border States Contract Service contracts with the State of Iowa to clean highway rest areas. Ms. Gallo was assigned to the Interstate 80 rest area west of Wilton, Iowa. Ms. Gallo's immediate supervisor was Operations Manager Frederick (Rick) Fischer. Border States Contract Service is owned by Mr. Fischer's spouse, Renae Fischer, but operated by Mr. Fischer. Mr. Fischer owns and operates Supreme Clean, Inc., which also contracts with the State of Iowa to clean highway rest areas. Mr. Fischer performs the accounting and payroll responsibilities for both corporations. Mrs. Fischer is a stay-at-home mother and is not involved in the operation of Supreme Clean.

On August 27, 2005, Border States Contract Service elected not to renew its contract with the State of Iowa. Supreme Clean was awarded the contract that had previously been held by Border States Contract Service. Supreme Clean continued to maintain the rest areas without any interruption in service. Mr. Fischer continued as Ms. Gallo's supervisor. Employees of Border States Contract Service became employees of Supreme Clean. Mr. Fischer did not inform Ms. Gallo that her employment with Border States Contract Service had ended or that she now worked for Supreme Clean. Mr. Fischer did change a sign at the rest area to indicate that Supreme Clean was now responsible for maintaining the site. Mr. Fischer did change the color of paychecks and the name of the employer on the paycheck. Ms. Gallo was still unaware that she had changed employers when Mr. Fischer laid her off from Supreme Clean, without warning, on November 26, 2005. Mr. Fischer intends to recall Ms. Gallo to the employment in the spring and Ms. Gallo intends to return the employment.

Ms. Gallo first became aware of the termination of her employment with Border States Contract Service when that employer protested Ms. Gallo's claim for benefits. The protest was filed on December 16, 2005. Border States Contracting Service is a base period employer, while Supreme Clean is not.

At 2:34 p.m. on January 17, 2006, Mr. Fischer sent an e-mail message instructing Ms. Gallo to write a letter to Iowa Workforce Development indicating she had *quit* the employment with Border States Contract Service in August and went to work for Supreme Clean on September 1. Mr. Fischer told Ms. Gallo that he needed to submit the letter to Workforce by 3:00 p.m. and requested that she "please fax a letter right NOW." See Exhibit B. Ten minutes later, Mr. Fischer sent Ms. Gallo a second e-mail message telling Ms. Gallo precisely what to write in her statement to Workforce Development. See Exhibit A. Six minutes later, Mr. Fischer sent Ms. Gallo a third e-mail message requesting a reply. At 3:48 p.m., Mrs. Fischer sent Ms. Gallo an e-mail message telling Ms. Gallo that Mrs. Fischer was *recalling* Ms. Gallo to her employment because Iowa Workforce Development had assessed benefits against the wrong employer. The e-mail message does not make clear whether Mrs. Fischer was recalling Ms. Gallo to her employment at Border States Contract Services or Supreme Clean. Mrs. Fischer warned that a refusal to return to the employment would result in loss of benefits. On January 25, Ms. Gallo faxed to the Appeals Section a statement that comported with the instructions Mr. Fischer had given on January 17.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Gallo voluntarily quit her employment with Border States Contracting Service. It does not.

871 IAC 24.1(113) provides, in relevant part, as follows:

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.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record establishes that Ms. Gallo neither formed an intent to sever the employment relationship with Border States Contracting Services nor engaged in an overt act indicative of such an intent. Ms. Gallo did not quit. Mr. Fischer was aware that Ms. Gallo had not quit the employment when he instructed her to tell Workforce Development she had quit the employment. The evidence in the record establishes that Border States Contract Services laid off Ms. Gallo in connection with the expiration of its contract with the State of Iowa. Ms. Gallo is eligible for benefits, provided she is otherwise eligible. Border States Contract Services' account may be assessed for benefits paid to Ms. Gallo.

DECISION:

The Agency representative's decision dated January 6, 2006, reference 01, is affirmed. The employer laid off the claimant due to a lack of work. The claimant is eligible for benefits. The employer, Border States Contract Services, may be assessed for benefits paid to the claimant.

JT/s