

**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**

**ROBBIE J BARKER
1023 ROOSEVELT ST
WATERLOO IA 50707-4021**

**CORKERY INDUSTRIES LC
300 ANSBOROUGH AVE
WATERLOO IA 50701**

**Appeal Number: 06A-UI-07363-HT
OC: 06/18/06 R: 03
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) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Corkery Industries, LC (Corkery), filed an appeal from a decision dated July 18, 2006, reference 01. The decision allowed benefits to the claimant, Robbie Barker. After due notice was issued, a hearing was held by telephone conference call on August 9, 2006. The claimant participated on his own behalf. The employer participated by President Larry Corkery.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Robbie Barker was employed by Corkery from March 6 until June 21, 2006. He was a full-time machine operator.

At the beginning of his employment the claimant's productivity was satisfactory. However, it began to decline and President Larry Corkery spoke to him more than once about the problem. On June 21, 2006, he again spoke with the claimant about his reduced productivity. Mr. Barker said if the employer was not pleased with him he should fire him. Mr. Corkery told him if that was the way he felt then he should leave. The claimant elected to leave.

Robbie Barker has received unemployment benefits since filing a claim with an effective date of June 18, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant quit work for reasons which would disqualify him from receiving unemployment benefits.

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(28) and (33) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The record establishes the claimant was not fired. He was being counseled about his performance but there is nothing to indicate his job was in immediate jeopardy. Mr. Barker challenged the employer to fire him and the president only told him he should leave if that was the way he felt. It was the claimant's decision to leave, not the employer's. He quit because he had been counseled about his work performance which had deteriorated. Under the provisions

of the above Administrative Code sections, these do not constitute good cause attributable to the employer for quitting and the claimant is disqualified.

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 unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of July 18, 2006, reference 01, is reversed. Robbie Barker is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$930.00.

bgh/cs