

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

DONALD W JOHNSON JR  
4140 46<sup>TH</sup> ST  
DES MOINES IA 50310

A J ALLEN MECHANICAL  
CONTRACTORS INC  
320 SE 6<sup>TH</sup> ST  
DES MOINES IA 50309-5122

Appeal Number: 04A-UI-09462-RT  
OC: 03/28/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, A.J. Allen Mechanical Contractors, Inc., filed a timely appeal from an unemployment insurance decision dated August 27, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Donald W. Johnson, Jr. After due notice was issued, a telephone hearing was held on September 27, 2004, with the claimant participating. Edward Allen, President and Andy Roberts, Foreman, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. This appeal was consolidated with appeal number 04A-UI-09463-RT for the purposes of the hearing with the consent of the parties.

#### 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: The claimant was employed by the employer as a full-time journeyman steam fitter from June 22, 2004 until he separated from his employment on July 21, 2004 which was his last day of work. The employer hired the claimant from his union to perform steam-fitting work for the employer at the employer's Archer-Daniel's-Midland Project. On July 21, 2004, the claimant left work early at 10:00 a.m. and never returned to the employer thereafter. The claimant was sick that day and told Rick Sturtz that he was sick and said that he was going to go home. The claimant did so, but he never returned to the employer. The claimant also never called the employer and informed them that he was not returning to work. The claimant recovered from his illness one or two days thereafter but never returned to the employer and never offered to go back to work. The employer had work remaining at the Archer-Daniel's-Midland Project on and after July 21, 2004 and in fact, still has work ongoing there. Further, on July 21, 2004 and thereafter, the employer had work at other projects available. The claimant's physician did not tell the claimant that he had to quit and he never called the employer after he left work on July 21, 2004. The claimant never expressed any concerns to the employer about his working conditions including that he was ill nor did he ever indicate or announce an intention to quit for any reason to the employer. The claimant did not work otherwise for the employer in 2004, but did work for the employer in 2003, but that separation is not at issue here and the employer is not contesting that separation.

Pursuant to his claim for unemployment insurance benefits filed effective March 28, 2004 and reopened effective August 1, 2004, the claimant has received unemployment insurance benefits in the amount of \$4,665.00 as follows: \$311.00 per week for 12 weeks from benefit week ending April 3, 2004 to benefit week ending June 19, 2004 and another \$933.00 for 3 weeks from benefit week ending August 7, 2004 to benefit week ending August 21, 2004. Unemployment insurance benefits in the amount of \$933.00 were received by the claimant after his separation from the employer herein.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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(21) provides:

- (21) The claimant left because of dissatisfaction with the work environment.

871 IAC 24.26(6)b, (6)a provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit when he failed to return to work after July 21, 2004 and did not notify the employer. The claimant does not seem to really advocate any particular form of separation but indicates that he left his work because he was sick and because he assumed that the work was completed. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left his employment voluntarily on July 21, 2004, which was his last day of work. All the witnesses agree that on July 21, 2004, the claimant left his worksite at 10:00 a.m. before completing his shift for that day. All the witnesses agree that the claimant never returned to work and all the witnesses agree that the claimant never informed the employer that he was not returning to work. Employer's witnesses, Edward Allen, President and Andy Roberts, Foreman, credibly testified that there was work remaining for the claimant after July 21, 2004. They testified that not only was there continuing work at the Archer-Daniels-Midland Project where the claimant was first working, but there was other work available to the claimant after July 21, 2004. They also credibly testified that the claimant had not finished piping the cooling tower. The claimant testified that he assumed his work was completed because he was hired only to do the piping of the cooling tower. The claimant's testimony here is not credible. The claimant

equivocated about whether he quit because he was sick or because he thought the work was completed and then testified that he assumed that the work was completed. The claimant also testified that the piping of the towers was completed. However, the employer's witnesses credibly testified that that was not true and the claimant was not told that he was hired simply to pipe up the cooling towers. On the evidence here, the administrative law judge concludes that the claimant left his employment voluntarily on July 21, 2004 when he never returned to work thereafter and did not notify the employer. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant testified that he left his employment because he believed that the work he was hired to do was completed, but the administrative law judge does not believe that this is credible as noted above and further notes that there was other work remaining for the claimant including even the work that the claimant says he was hired to do, namely, piping up the coolers. Then the claimant testified that he left work because he was sick. However, the claimant also testified that his physician did not tell him that he had to quit. Further, the claimant conceded that he never informed the employer of any concerns about his working conditions including his illness nor did he ever indicate or announce an intention to quit if any of his concerns were not addressed. The administrative law judge concludes that the claimant has failed to present competent evidence showing adequate health reasons to justify a termination or that he informed the employer of the work related health problem or that he informed the employer that he intended to quit unless the problem was corrected or that he ever asked for any accommodation. Accordingly, the administrative law judge concludes that there is not a preponderance of the evidence that the claimant left his work voluntarily with good cause attributable to the employer for an employment related illness. The claimant also has never returned to the employer and offered to go back to work. Accordingly, the administrative law judge concludes that there is not a preponderance of the evidence that the claimant left his employment voluntarily with good cause attributable to the employer for a non-employment related illness. There was some evidence that the claimant was dissatisfied with his work environment but this is not good cause attributable to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about any of his working conditions or that he ever indicated or announced an intention to quit if any of his concerns were not addressed. The claimant gave the employer no reasonable opportunity to address any of his concerns prior to his quit.

In summary, for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$933.00 since separating from the employer herein on or about July 21, 2004 and reopening his claim for benefits effective August 1, 2004 to which he is not entitled and for which he is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions Iowa law.

**DECISION:**

The representative's decision dated August 27, 2004, reference 01, is reversed. The claimant, Donald W. Johnson, Jr., is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. He has been overpaid unemployment insurance benefits in the amount of \$933.00.

kjf/b