

**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**

**BRYAN J HUBKA  
324 W 5<sup>TH</sup> ST  
CRESCO IA 52136**

**ALUM LINE INC  
PO BOX 59  
CRESCO IA 52136-0059**

**Appeal Number: 05A-UI-01059-DWT  
OC: 01/02/05 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, 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 Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Alum Line, Inc. (employer) appealed a representative's January 27, 2005 decision (reference 01) that concluded Bryan J. Hubka (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on March 9, 2005. The claimant participated in the hearing. Al Lucas, a supervisor, Gary Gooder, the owner, and Larry Bruess, the production manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on July 16, 2004. The claimant worked full time finishing trailers. During his employment, the claimant received written warnings on November 10 and December 15, 2004, for having a negative attitude at work and for unsatisfactory job performance. On December 15, 2004, the employer informed the claimant that at the beginning of the new pay period his hourly wage would be reduced 50-cents an hour. The employer asked the claimant to sign the warning and return it to Bruess. The claimant never returned the December 15 warning.

On December 17, 2004, Lucas saw the claimant doing nothing for about 15 minutes. After Lucas told the claimant to get to work, the claimant swore at Lucas. This incident was reported to Bruess.

On Sunday, December 19, 2004, the claimant received a call regarding his wife's mother. She was experiencing medical problems and asked that the claimant and his wife come to Mason City to be with her. On Sunday evening the claimant and his wife drove to Mason City to be with his mother-in-law. Before the claimant left for Mason City, he called the employer's office but no one answered and there was no answering machine. The claimant and his wife were at the Mason City hospital until around 3:00 p.m. on December 20. The claimant's mother-in-law was at the hospital for observation. The claimant did not think to use his cell phone to contact the employer when he was at the hospital on December 20.

When the claimant left the hospital, he listened to messages that had been left on his cell phone. A friend, who works for the employer, informed the claimant he no longer had a job because he had not reported to work. The claimant did not contact the employer to explain the situation with his mother-in-law. The employer assumed the claimant quit when he did not return to work or contact the employer after December 17, 2004.

The claimant established a claim for unemployment insurance benefits during the week of January 2, 2005. The claimant filed claims for the weeks ending January 8 through February 19, 2005. He received his maximum weekly benefit amount of \$215.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The claimant's failure to contact the employer anytime on or after December 20 indicates the claimant quit or abandoned his employment. The claimant's reliance on another employee's message that he had been discharged does not establish that the employer actually discharged the claimant. Since the friend was not in management, the claimant should have contacted the employer on

December 20, 2004, if he wanted to try to continue his employment. The facts indicate the claimant would have had continued employment if he had contacted the employer. When a claimant quits, he has the burden to establish he quit his employment with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant has left employment without good cause when he quits after being reprimanded. 871 IAC 24.25(28). The evidence indicates the claimant did not appreciate the warning and wage reduction the employer imposed upon him. The claimant's negative attitude about work was further illustrated when he swore at Lucas after Lucas told the claimant to get to work on December 17, 2004. Even the 50-cent hourly wage reduction does not amount to a substantial change in the claimant's employment. 871 IAC 24.26(1). Ultimately, the claimant abandoned or voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. As of January 2, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending January 8 through February 19, 2005. The claimant has been overpaid \$1,505.00 in benefits he received for these weeks.

**DECISION:**

The representative's January 27, 2005 decision (reference 01) is reversed. The employer did not discharge the claimant. Instead, the claimant voluntarily quit his employment by abandoning it after December 17, 2004. The claimant is disqualified from receiving unemployment insurance benefits as of January 2, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending January 8 through February 19, 2005. The claimant has been overpaid \$1,505.00 in benefits he received for these weeks.

dlw/pjs