

**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**

**GERALD A STOEBER
801 E 11TH ST
SPENCER IA 51301**

**GENERAL MACHINE WORKS
13 W 1ST ST
SPENCER IA 51301**

**Appeal Number: 05A-UI-07982-R
OC: 07-10-05 R: 01
Claimant: Appellant (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 Quitting

STATEMENT OF THE CASE:

The claimant, Gerald A. Stoeber, filed a timely appeal from an unemployment insurance decision dated July 29, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, an in-person hearing was held in Spencer, Iowa, at the claimant's request, on September 20, 2005, with the claimant participating. Rick Arends, General Manager, and Dave Tutt, Shop Floor Supervisor, participated in the hearing for the employer, General Machine Works. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

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 machine operator from June 2, 1994 until he voluntarily quit effective July 8, 2005. On that day, the claimant called and spoke to Dave Tutt, Shop Floor Supervisor, and told him that he was quitting. The claimant did not go to work that day nor has he ever returned to the employer and offered to go back to work. The claimant quit because the employer did not give him a bonus for the prior two-week period. The claimant worked on the second shift and all employees on the second shift were eligible for a bonus which was paid to them by a separate check. The bonus was for quality and performance. The bonus amounted to approximately \$3.25 per hour and assuming the claimant worked 100 hours in the prior two-week period the bonus would have been \$325.00. The claimant did not receive the bonus because he had made serious errors on parts that he was making. The claimant left visible burrs on the parts he was making. Instead of immediately fixing them, the claimant put them in the box in which they were to be shipped to the purchaser. The burrs were readily visible. The claimant was aware of the errors and the burrs but nevertheless put them in the box ready to go anyway. The claimant conceded that the errors were his fault. The claimant had no explanation as to why he did not correct the burrs before putting them in the box. Approximately June 21, 2005, the claimant had a meeting with Mr. Tutt and the employer's other witness, Rick Arends, General Manager, and the owner of the business, at which time the claimant was confronted about these errors. The claimant's errors were made the day before the meeting. The claimant was placed on probation. The claimant volunteered to fix the parts on his own time and he did so. Later, after the meeting, Mr. Tutt told the claimant that he might not get his bonus for that pay period of two weeks because of the quality of the parts.

On July 7, 2005, the claimant learned for sure that he was not going to get his bonus when he got his check. Nevertheless, the claimant never expressed any concerns to anyone at the employer about the bonus nor did he ever indicate or announce an intention to quit if any of his concerns about the bonus were not addressed by the employer. The claimant was mad when he did not get his bonus and called Mr. Tutt and told Mr. Tutt that he was done and when Mr. Tutt asked what the claimant meant the claimant said he was not coming to work because of the bonus. The claimant never returned to work.

The bonus began in 1994 at \$1.75 per hour but it was never guaranteed. The bonus was for performance and quality because the employees on the second shift had no supervisors and no quality control. This was explained to the employees in 1994. Some years later the bonus was increased to \$3.25 per hour and again the bonus was explained to the employees at another meeting. Although rare, other employees have been denied bonuses for poor performance and quality.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 24.26(1) provides:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.25(13), (28) 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(28) The claimant left after being reprimanded.

The parties agree, and the administrative law judge concludes, that the claimant left his employment voluntarily on July 8, 2005. 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 only reason that the claimant quit was because he was denied a bonus for a two-week period because of poor quality of parts. The evidence is uncontested that the claimant made serious errors on parts by leaving visible burrs on the parts. It is also contested that instead of immediately fixing the burrs the claimant placed them in a box in which they were ready to be shipped. It is also uncontested that these burrs or errors on the parts were the claimant's fault. The claimant had no explanation as to why he did not fix the burrs instead of placing them in the box ready to be

shipped. The claimant testified that he believed that the bonus was differential pay because he worked on the second shift and because he had always gotten the bonus throughout his employment. However, the claimant's testimony is not entirely credible and is equivocal. The employer's witness, Rick Arends, General Manager, credibly testified that at all times the bonus was considered a bonus for quality and performance and was not guaranteed to the employees. This was explained to the employees in 1994 when the bonus was first initiated and later again when the bonus was increased. The evidence establishes that, although rare, other employees were denied bonuses for poor performance. The claimant was aware of that. The claimant even himself referred to the money as a "bonus." The word "bonus" connotes a special payment for good work or performance or for some other special recognition of the employee's work and is not a guaranteed payment. Accordingly, the administrative law judge concludes that there was no guarantee that the claimant would receive a bonus and that his failure to receive a bonus for a two-week period was therefore not a breach of his contract of hire. It is true that the claimant had always received a bonus but it is also true that the claimant was aware that other employees had not received a bonus when their quality of work was poor. Accordingly, the administrative law judge concludes that the failure to pay the claimant a bonus for a two-week period was not a willful breach of his contract of hire and therefore is not good cause attributable to the employer.

The administrative law judge concludes that the claimant really left his employment because of dissatisfaction with the wages but knew the rate of pay when hired and perhaps more compellingly because he was reprimanded for his work but these reasons are not good cause attributable to the employer. The administrative law judge concludes that the claimant did make serious errors in the making of parts and instead of immediately correcting them he placed them in a box ready to be shipped. The administrative law judge concludes that the reprimand and the denial of the bonus was justified in view of the claimant's poor quality of work which even the claimant conceded was his fault. The fact that the claimant, on his own time, fixed the parts does not alter the fact that the claimant made errors on parts and instead of fixing them put them in a box ready to be shipped. Finally, the claimant never expressed any concerns to the employer about the bonus or indicated or announced an intention to quit prior to his quit over the bonus. The claimant did not give the employer a reasonable opportunity to address his concerns. Accordingly, 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.

DECISION:

The representative's decision of July 29, 2005, reference 01, is affirmed. The claimant, Gerald A. Stoeber, 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.

srs/kjw