

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

DENNIS M MERTZ
1623 S CAROLINA AVE
MASON CITY IA 50401

SCHUKEI CHEVROLET INC
PO BOX 1525
MASON CITY IA 50402

Appeal Number: 05A-UI-07834-HT
OC: 06/19/05 R: 02
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 96.6(2) – Timeliness
Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Dennis Mertz, filed an appeal from a decision dated July 13, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 17, 2005. The claimant participated on his own behalf. The employer, Schukei Chevrolet, Inc. (Schukei), participated by Sales Manager Don O'Connor. Exhibit D-1 was admitted into the record.

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: Dennis Mertz received the disqualifying decision dated July 13, 2005. He went to his local Workforce Center on July 18, 2005, and an appeal was faxed to the Iowa Workforce Development Appeals Section. However, it was never received. Mr. Mertz then checked in with a workforce representative on August 1, 2005, and she contacted the Appeals Section. When it was learned the initial fax was not received, it was faxed again and received.

Mr. Mertz was employed by Schukei from February 2 until June 20, 2005. On May 12, 2005, Sales Manager Don O'Connor announced it was time for all the sales people to get certified on the new model cars. This is required by General Motors Corporation every year to increase the sales people's knowledge of the new models. The tests are taken on a computer at the dealership and are "open book" with no time limit. Sales people may take the test as many times as they need in order to pass, but the certification must be complete by June 1, 2005.

The claimant failed to achieve the certification by the required date and was told he could not sell any new cars until he did. Sales Manager Dan O'Connor reminded him frequently that he needed to "get over to the computer" and finish the tests. He also offered to help the claimant but Mr. Mertz was only able to pass two or three of the required 25 levels. On June 20, 2005, he cleaned out his desk and walked out without giving notice to anyone. The first notice the employer received was the notice of claim from Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal is timely. The judge concludes it is.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did submit his appeal in a timely manner but, through no fault of his own, it was not received by Iowa Workforce Development Appeals Section. When he learned of this he immediately submitted another appeal. It shall be accepted as timely.

The next issue is whether the claimant is disqualified. The judge concludes 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.

The claimant quit his job because he was not able to pass the necessary certification levels in order to sell the new cars at the dealership. The certification is required of all sales people every year and plenty of leeway is given as far as no time limits on the test and they may be taken as many times as necessary in order to pass. The claimant seemed to feel he was being "tortured" by Mr. O'Connor because the sales manager frequently reminded and encouraged him to go over to the computer and complete the tests. He was not in danger of being discharged but he could not be allowed to sell new cars until he passed the certification required by General Motors.

Instead of talking to the employer about his problem, and getting whatever help was available, the claimant elected to walk out without notice to anyone. Swanson v. EAB, 554 N.W.2d 294 (Iowa App. 1996) requires an employee to first tell the employer of an intent to quit unless the claimant's concerns are addressed. Mr. Mertz did not do this, merely walked out without giving anyone an opportunity to assist him in dealing with his problems. The record establishes the claimant did not have good cause attributable to the employer and he is disqualified.

DECISION:

The representative's decision of July 13, 2005, reference 01, is affirmed. The claimant's appeal shall be accepted as timely. Dennis Mertz is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/tjc