

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

MARTIN D OLSEN
1845 E CRESTON AVE
DES MOINES IA 50320-1272

PEPSICO INC
FRITO-LAY SALES LP
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07040-DWT
OC: 06/04/06 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, 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 Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Frito-Lay, Inc. (employer) appealed a representative's June 28, 2006 decision (reference 04) that concluded Martin D. Olsen (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 24, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Jackie Wiegand, a TALX representative, appeared on the employer's behalf with Tom Healy, a zone operation manager, as a witness for the employer. Based on the evidence, the arguments of the employer, 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 the claimant to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on December 15, 2005. Although the claimant wanted full-time work, the employer hired him as a part-time employee. The employer hired the claimant to work about 30 hours a week in the warehouse. At the time of hire, the claimant learned the employer expected employees to reach certain accuracy and efficiency goals when picking products in the warehouse.

On March 8, 2006, the employer gave the claimant a written notice that if he had a picking accuracy average of 96 percent and his efficiency average was 95: percent by April 15, the employer would hire the claimant to work as a full-time employee. However, if the percentages in these two categories were not at a certain level by April 15, the employer could end the claimant's employment.

Each week employees receive information that updates the employee about his picking accuracy and efficiency percentages. After the March 8 coaching, the claimant's percentages increased. Initially, the claimant gave Healy a written resignation letter indicating his last day of work would be April 7. The claimant indicated he was quitting because the job was not working out for him. When the claimant asked if his last day of work could be extended to April 14, the employer did not object. The claimant's last actual day of work was April 10, 2006. The claimant did not return to work after April 10, 2006.

The claimant established a claim for unemployment insurance benefits during the week of June 4, 2006. The claimant filed claims for the weeks ending June 10 through 24, 2006. The claimant received \$917.00 in benefits for 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 attributable to the employer or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. While the employer may have discharged the claimant as of April 15, the employer had not made a decision concerning the claimant's continued employment when the claimant gave the employer his written resignation. The facts establish the claimant voluntarily quit his employment when he gave the employer his written resignation. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code§ 96.6-2.

The law presumes a claimant voluntarily quits employment without good cause when he leaves because he feels his performance is not satisfactory even though the employer has not asked the claimant to leave and continued work is available. 871 IAC 24.25(33).

Since the claimant did not participate in the hearing, the evidence does not indicate why the claimant quit his employment instead of waiting until April 15 to find out what the employer would do about his continued employment. The claimant may have had compelling personal reasons for quitting. The evidence does not establish that the claimant quit his employment for reasons that qualify him to receive unemployment insurance benefits. Therefore, as of June 4, 2006, 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 section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending June 10 through 24. The claimant has been overpaid \$917.00 in benefits he received for these weeks.

DECISION:

The representative's June 28, 2006 decision (reference 04) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. Therefore the claimant is disqualified from receiving unemployment insurance benefits as of June 4, 2006. 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 benefits for the weeks ending June 10 through 24, 2006. The claimant has been overpaid and must repay a total of \$917.00 in benefits he received for these weeks.

dlw/pjs