

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

PATRICK J ESTERS
217 MOHAWK ST
WATERLOO IA 50703

FERGUSON ENTERPRISES INC
c/o TALX – UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-07320-SWT
OC: 04/03/05 R: 03
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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 8, 2005, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 2, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Shawn Donahoe participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a warehouse worker from May 2 to June 10, 2005. When the claimant was hired, he was informed that the job involved overtime work as necessary. After the claimant was hired, he was working 55 to 60 hours per week and received overtime pay for his hours over 40. The claimant was dissatisfied with having to work so much overtime so he quit his employment on June 10, 2005. He complained about the overtime but

was told that it was necessary because the employer was a new business and that the overtime would go down over time.

The claimant reopened his claim for unemployment insurance benefits with an effective date of June 19, 2005. He was paid \$1,512.00 in unemployment insurance benefits for the weeks between June 19 and July 30, 2005, with \$652.00 in benefits applied to a previous overpayment owed by the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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 unemployment insurance rules provide that a claimant has good cause to leave employment if the type of work was misrepresented at the time of hire. 871 IAC 24.26(23). In this case though, the claimant knew that overtime was required as needed. There was no misrepresentation of the work being offered the claimant.

The next issue in this case is whether the claimant was overpaid unemployment insurance 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective June 19, 2005, and was overpaid \$1,512.00 in unemployment insurance benefits for the weeks between June 19 and July 30, 2005.

DECISION:

The unemployment insurance decision dated July 8, 2005, reference 03, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,512.00 in unemployment insurance benefits, which must be repaid.

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