

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

JAMES A REINER  
2874 – 58<sup>TH</sup> ST  
VINTON IA 52349

RI CCH  
MEINEKE DISCOUNT MUFFLER SHOPS  
1600 – 6<sup>TH</sup> ST SW  
CEDAR RAPIDS IA 52404-3507

Appeal Number: 05A-UI-01432-SWT  
OC: 12/19/04 R: 03  
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, 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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 1, 2005, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on February 24, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. The claimant is also the president of the employer in this case.

FINDINGS OF FACT:

The employer is a corporation created by the claimant in 1989 to operate a Meineke Muffler franchise in Cedar Rapids, Iowa. The claimant worked in the business from December 12, 1989 to December 12, 2004. The claimant was the manager of the business and is the president, chairman of the board of directors, and stockholder of the corporation. His wife is the secretary/treasurer of the business. There are no other officers or directors of the corporation.

The claimant set his own wages, hours of work, and duties. He made the management decisions for the business and was subject to no one else's direction or control.

The claimant sold the assets of the business on December 12, 2004, because Meineke Muffler was requiring him to pay a \$15,000.00 as a franchise startup fee and 15 percent of the business' gross

income for a new 15-year contract. This was the same fee required during the first contract term. The claimant did not want to enter into a new contract and the previous contract would not allow him to operate a competing auto business. No involuntary bankruptcy was imminent when the claimant sold the business.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether an employee of a corporation who is also the company's president, director, and stockholder and makes the business decisions can draw unemployment insurance benefits when the business is sold.

Services performed by an officer of a corporation are considered covered employment under the unemployment insurance law and employers are required to pay unemployment insurance tax contributions on the wages paid to corporate officers. Iowa Code section 96.19-18-a(1).

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 division of job service.

The Iowa Supreme Court has ruled that a claimant who is also a corporate officer, director, and major shareholder and has management control of the corporation does not voluntarily leave employment when he decides to close the business when the business fails for economic reasons. Bartelt v. Empl. Appeals Bd., 494 N.W.2d 684, 686 (Iowa 1993). In Bartelt, the president and sole stockholder of a corporation became unemployed after closing the business and filing a voluntary petition for bankruptcy. The corporation's largest supplier and creditor was about to seize most of the company's assets and involuntary bankruptcy was probably a few days away. The Iowa Supreme Court, after considering the dictionary definitions of the word "voluntary," ruled that the decision to file for voluntary bankruptcy was not in fact voluntary because voluntary "entails a free choice" and Bartelt had no choice in the court's judgment because involuntary bankruptcy was a "near mathematical certainty." Bartelt, 494 N.W.2d at 686.

In this case, no involuntary bankruptcy or liquidation of the business was imminent. As a result, the claimant voluntarily quit employment and was responsible for the loss of his employment. The fact that the business was not as profitable as the claimant wanted provided a good reason to sell the business, but the evidence does not establish that his separation from employment was involuntarily or for good cause attributable to the employer.

#### DECISION:

The unemployment insurance decision dated February 1, 2005, reference 01, is affirmed. 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.

saw/sc