

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

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Appeal Number: 05A-UI-07962-RT
OC: 06-19-05 R: 01
Claimant: Respondent (5)

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
Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 - Required Findings (Able and Available for Work)
Section 96.7-2-a–2 – Employer Contributions and Reimbursements
(Same Employment – Benefits not Charged)
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Hartl Insulation, filed a timely appeal from an unemployment insurance decision dated July 28, 2005, reference 02, allowing unemployment insurance benefits to the claimant, Mark L. Sturm, beginning May 20, 2005. After due notice was issued, a telephone hearing was held on August 19, 2005, with the claimant participating. Robert Hartl, Owner, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa

Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibit 1 was admitted into evidence.

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 an installer from May 12, 2005, until he separated from his employment on May 28, 2005. During that period of time the claimant was full-time. The claimant was employed as a contract laborer to work on a job. The claimant's job was completed on May 28, 2005. The employer had no other work for the claimant at that time. Approximately one month later, the employer had additional work and tried to call the claimant, but could not reach the claimant. The claimant has placed no physical restrictions or training restrictions on his ability to work. The claimant has placed no day restrictions or time restrictions or other restrictions on his availability for work. The claimant is earnestly and actively seeking work by making two in-person job contacts each week.

Pursuant to his claim for unemployment insurance benefits filed effective June 19, 2005, the claimant has received unemployment insurance benefits in the amount of \$2,262.00 as follows: \$309.00 per week, for three weeks, from benefit week ending June 25, 2005 to benefit week ending July 9, 2005; \$136.00 per week for three weeks, from benefit week ending July 16, 2005 to benefit week ending July 30, 2005 (earnings in each week of \$250.00); and \$309.00 per week for three weeks, from benefit week ending August 6, 2005 to benefit week ending August 20, 2005. The claimant's benefits have been determined on earnings from a prior employer, Farner Bocken Company. The employer herein is a lag for an employer and has not been charged for any benefit, which the claimant has received or will be entitled.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because at relevant times, he was not able, available, and earnest and actively seeking work. The claimant is not ineligible to receive unemployment insurance benefits.
3. Whether the claimant is employed under the same hours and wages as he did in his base period, and therefore the employer would not be charged for any unemployment insurance benefits to which the claimant is entitled. The claimant is not employed at the same hours and wages as he had been and therefore the employer would not be relieved of any charges for unemployment insurance benefits to which the claimant might be entitled. However, since the employer was a "lag" quarter employer, the employer herein is not being charged for any unemployment insurance benefits to which the claimant is presently entitled under his benefit year effective June 19, 2005.
4. Whether the claimant is overpaid unemployment insurance benefits. He is not.

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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.26(19)(22) 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:

- (19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a

voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

The first issue to be resolved is the character of the separation. The administrative law judge concludes that the claimant was effectively laid off for a lack of work. The employer's witness, Robert Hartl, Owner, credibly testified that the claimant was hired as a contract laborer for a particular job, which began on May 12, 2005, and was completed on May 28, 2005. Mr. Hartl testified credibly that he had no work thereafter. Mr. Hartl's testimony is confirmed by Employer's Exhibit 1, which is a check he wrote to the claimant dated May 28, 2005, paying the claimant for all work performed. Accordingly, the administrative law judge concludes that the claimant was neither discharged nor did he quit, but he was laid off for a lack of work. Even should the claimant's separation be considered a voluntary quit, it would be considered a voluntary quit with good cause attributable to the employer, because the claimant was hired for a specific period of time and completed the contract of hire by working until the specific period of time or project had lapsed. See 871 IAC 24.26(22). Even should the claimant's employment be considered an assignment to spot jobs for casual labor work, the claimant fulfilled the contract of hire when each of his jobs was completed, and he would still not be disqualified to receive unemployment insurance benefits as a result of a voluntary quit, even if he elected not to report for a new assignment. See 871 IAC 24.26(19). Even should the claimant's separation be considered a discharge, there is no evidence that the claimant was discharged for disqualifying misconduct and he would still not be disqualified to receive unemployment insurance benefits. The bottom line here is that the claimant was laid off for a lack of work on May 28, 2005 and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant beginning with benefit week ending June 4, 2005 and continuing thereafter, provided he is otherwise eligible.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements

of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has a burden to prove that he is able, available, and earnest and actively seeking work under Iowa Code section 96.4-3, or as otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has met his burden of proof to demonstrate by a preponderance of the evidence that he is and was able, available, and earnest and actively seeking work. The claimant so credibly testified and there is no evidence to the contrary. The fact that the employer could not reach the claimant does not indicate that the claimant was not able, available, and earnestly and actively seeking work during the relevant times herein. The administrative law judge notes that the claimant reported earnings in three weeks, during which he claimed benefits. Accordingly, the administrative law judge concludes that the claimant is able, available, and earnestly and actively seeking work and is not ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided he remains able, available, and earnest and actively seeking work and is otherwise entitled to such benefits.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The administrative law judge concludes that the claimant is not receiving the same employment from the employer as he did previously. The claimant was under a contract to work for the employer and that terminated and the claimant has not been reemployed. Therefore, the administrative law judge concludes that the claimant is not receiving the same employment from the employer as he had previously and, as a consequence, the employer is not relieved of any charges for unemployment insurance benefits to which the claimant is entitled. However, the administrative law judge specifically notes that the employer herein is a "lag" quarter employer for the claimant's benefit year effective June 19, 2005 and would not be charged for any unemployment insurance benefits to which the claimant is entitled during that benefit year. The administrative law judge further notes that the claimant's benefits have been determined solely on earnings from a prior employer, Farner Bocken Company.

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.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,262.00, since separating from the employer herein on or about May 28, 2005, and filing for such benefits effective June 19, 2005. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of July 28, 2005, reference 02, is modified. The claimant, Mark L. Sturm, is entitled to receive unemployment insurance benefits, beginning with benefit week ending June 4, 2005 and continuing thereafter, provided he is otherwise eligible to receive unemployment insurance benefits, because he was laid off for a lack work after May 28, 2005. The claimant is able, available, and earnest and actively seeking work and is not ineligible to receive unemployment insurance benefits for that reason. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

dj/pjs