

**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**

**CHARLES H GORDON
3803 SE 8TH
DES MOINES IA 50315**

**WEST DES MOINES COMMUNITY
SCHOOL DISTRICT
ATTN LINDA SHERIFF
3550 MILLS CIVIC PKWY
WEST DES MOINES IA 50265-5556**

**Appeal Number: 04A-UI-04179-DT
OC: 03/14/04 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 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Charles H. Gordon (claimant) appealed a representative's April 1, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from the West Des Moines Community School District (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 6, 2004. The claimant participated in the hearing. Cheryl Huisman appeared on the employer's behalf and presented testimony from two other witnesses, Doug Woodley and Brenda Moorehead. This appeal was consolidated for hearing with two related Appeal Numbers 04A-UI-04180-DT and 04A-UI-04181-DT. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 13, 1992. He worked full time as a custodian at the employer's senior high school. His last day of work was March 14, 2003.

On March 14, 2003, the claimant reported to work as scheduled at approximately 3:30 p.m. Shortly after arriving at the school, he was confronted by a police officer who asked him who the truck in the parking lot belonged to. The claimant indicated that it was his vehicle. The officer stated that he had received a complaint from another motorist that the claimant's vehicle had just been involved in a traffic incident but had left the area. The officer then directed the claimant to submit to a breath alcohol test, which he did. The officer indicated that the claimant was under the influence of alcohol. The officer then contacted the claimant's supervisor, Mr. Woodley, and reported the situation. Mr. Woodley indicated that the claimant should be sent home for the day. The officer took the claimant to the city limits and arranged for a taxi to take him the rest of the way home.

The claimant was on leave with pay status as of leaving work on March 13, pending further investigation. A meeting was held between the employer's representatives, the claimant, and a union representative on March 20, 2003. Ms. Huisman, the assistant superintendent for human resources, indicated to the claimant that reporting for work under the influence was grounds for discharge. She then proceeded to explain that there were three options available as to how to deal with the situation: the claimant could be discharged, he could resign, or he could agree to obtain counseling and treatment through the employer's employee assistance program (EAP) and potentially save his job. The claimant, however, did not really focus on anything Ms. Huisman said after she indicated that there were grounds for discharge. He did indicate that he would like 24 hours to think about the situation, so another meeting was scheduled for March 21. At the time for the meeting, however, the claimant did not show up for the meeting, nor did he subsequently contact the employer, believing that he was discharged. When the claimant did not report for the meeting and did not subsequently contact the employer, the employer considered the claimant as having quit his position.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

Where an individual mistakenly believes that he is discharged and discontinues reporting to work, but was never told he was discharged, the separation is considered a voluntary quit without good cause attributable to the employer.

Inasmuch as the employer had not told the claimant he was fired but had rather given the claimant an option that would have preserved his job, and the claimant failed to pursue that option and did not return to the employer without obtaining a final determination as to the status of his employment relationship with the employer, he acted in a manner such that the employer would reasonably believe he had resigned his position. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify the claimant. Iowa Code Section 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The representative's April 1, 2004 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of March 21, 2003, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

ld/kjf