

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KIRBY J TRUESDELL
Claimant

APPEAL NO. 09A-UI-08086-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNICCO SERVICE COMPANY
Employer

**Original Claim: 04/05/09
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Kirby Truesdell (claimant) appealed a representative's June 3, 2009 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Unicco Service Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 22, 2009. The claimant participated personally. The employer participated by Gary Nosek, Account Manager.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 3, 2008, as a full-time precision mechanic. At the time he was hired, the supervisor told the claimant he would be earning less than the amount he earned at his previous job but the claimant would be allowed time off to attend classes. The classes would help him perform his work better.

On or about January 20, 2009, the claimant told the supervisor that classes would start on February 6, 2009. The supervisor refused to alter the claimant's schedule so that he could attend classes. The claimant did not appear for work after January 20, 2009.

The claimant attended school for three hours per day through May 20, 2009. He filed for unemployment insurance benefits with an effective date of April 5, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work with 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.

871 IAC 24.26(23) 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:

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. When an employee quits work because the type of work was misrepresented to the claimant at the time he accepts the job, his leaving is with good cause attributable to the employer. The claimant left work because the work was represented as full-time but it was not. His leaving was with good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed.

871 IAC 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

The claimant was not a full-time student. When a claimant is a full-time student, the claimant is deemed to not be available for work. The claimant is not disqualified from receiving unemployment insurance benefits, because he was available for work. His part-time student status did not prohibit him from working.

DECISION:

The representative's June 3, 2009 decision (reference 03) is reversed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits. He is not disqualified from receiving unemployment insurance benefits. He is able and available for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw