

**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**

**JOHN P MCCOWAN
#301
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CORALVILLE IA 52241**

**NIHON BLDG PROJECT USA INC ET AL
WALDEN PLACE
c/o EMPLOYERS UNITY INC
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**Appeal Number: 06A-UI-00804-LT
OC: 12-25-05 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, 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)

Iowa Code §96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the January 13, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 27, 2006. Claimant did participate and was represented by James Larew, Attorney at Law. Employer did participate through Doug Wolff, manager, and was represented by Michelle Hawkins of Employers Unity. Employer's Exhibit 1 was received. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time cook August 2004 through December 12, 2005 when he walked off the job. Claimant had been working full time as an executive chef since his promotion on August 25, 2005 (Claimant's Exhibit A) and after Doug and J.D. Wolff became managers in

October 2005, he was demoted to cook on December 3, 2005. As executive chef under the previous management claimant had access to the office where recipes were kept and he was allowed to change clothes in there. Wolff did tell claimant after the demotion on December 5 not to enter the office if it was locked. (Employer's Exhibit 1, numbered page 8)

On December 9, 2005, Wolf caught claimant showing dishwasher Daniel McAfee how to use a butter knife to open the lock on the office door without permission. Wolff confronted him but claimant was "at a loss for words" as to why he needed access to the office so Wolff told him never to go into the office and it was his last warning. He then said he needed access to recipes but the daily recipes were placed in the kitchen and the executive chef or managers could open the office if claimant needed specific access. Wolf told him if this behavior continued, he would either be terminated or his hours would be reduced to times when others were present to supervise him until he could work without supervision. J.D. Wolff, co-manager, was present when claimant declined to sign the reprimand on December 9, 2005. (Employer's Exhibit 1, numbered page 6)

On December 12 when claimant reported to work and noticed his shifts had been cut from five days to three (Monday, Friday and Saturday, December 12, 16 and 17) he became "irate," clocked out at 2:45 p.m. before the shift ended at 7:30 p.m., and told Doug Wolff, manager, "you know where to send my check." Continued work was available had he stayed to work the remainder of the shift.

Claimant sent undated correspondence to Wolff who received it on December 15 asking about the reduction of hours and whether those hours would be restored. (Employer's Exhibit 1, numbered page 2) Wolff did reply on December 16 advising him that he considered claimant to have abandoned his job on December 12 when he left before the shift ended without permission. (Employer's Exhibit 1, numbered page 1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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).

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 24.25(22) (27) & (28) provide:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(22) The claimant left because of a personality conflict with the supervisor.

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

Claimant engaged in misconduct with respect to entering the locked office without permission on December 9 after having been told not to do so on December 5. Since claimant left before the conclusion of his shift on December 12 because of the disciplinary reduction in hours, the separation was considered a voluntary abandonment of his job without good cause attributable to the employer. Benefits are denied.

DECISION:

The January 13, 2006, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

dml/tjc