

**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**

**KENNETH H SCHMITT  
1889 VIZALEEA  
DUBUQUE IA 52002**

**EAGLE WINDOW & DOOR INC  
ATTN AMY TURNER  
PO BOX 1072  
DUBUQUE IA 52004**

**Appeal Number: 04A-UI-03792-DT  
OC: 03/07/04 R: 04  
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 Leaving

STATEMENT OF THE CASE:

Kenneth H. Schmitt (claimant) appealed a representative's March 26, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Eagle Window & Door, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 26, 2004. The claimant participated in the hearing. Amy Turner appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

#### FINDINGS OF FACT:

The claimant started working for the employer on November 10, 2003. He worked full time as a laborer in the employer's door and window manufacturing business. His last day of work was January 23, 2004. In his pre-employment application and discussions with the employer, the claimant indicated he could work on "any shift," but did indicate he had a transportation issue that could be avoided if he worked on the first shift in the same department as a friend. When the claimant started working, he was placed on the first shift in the same department as his friend. However, because of another employee's return from a leave and the claimant's low seniority, effective December 15, 2003, he was moved to a second-shift position in the same department.

The claimant found he could take a bus to get to work by 3:15 p.m., but he had to leave home at approximately 1:15 p.m. He had been unsuccessful in finding anyone to agree to give him a ride home when the shift was over at 12:45 a.m., and so had been walking home in the cold and sometimes inclement weather, and sometimes taking over an hour and a half. For about three weeks prior to January 23, the claimant regularly commented to one or the other of his two supervisors that he was walking home in the dark and cold. He inquired as to whether there was any possibility of another position opening up in the same department on the first shift. There were first-shift positions available in other departments that might have had earlier start times than the claimant's department, so he did not apply for a transfer to those positions, as he was not certain how he would get to work. He did not attempt to arrange to use a taxi service to get home at night on the second shift because he did not think of that option.

Perhaps because of getting severely chilled walking home the night of January 23, the claimant became ill and missed work the week of January 26, although he did call in his absences. However, he had effectively already come to the decision that he would leave his employment. He did come into the facility in the morning of February 2 and met with Ms. Turner, the human resources representative. He asked her about how his attendance points would be counted for the prior week, which she could not answer, as his supervisor had not yet turned in the reports for the prior week. She advised him to visit with his supervisor when he reported for his shift that afternoon. He did not discuss with her his problems with transportation working on the second shift, and he did not tell her that he did not intend to report for his shift that afternoon or that he had in effect already decided not to return to work.

#### 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.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board,

494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out by abandoning his position. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code Section 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). While the claimant's transportation situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant had agreed to work "any shift," so his transfer to second shift was not a breach of his employment agreement. 871 IAC 24.26(1). Transportation issues are matters of personal responsibility, and a lack of transportation is not good cause attributable to the employer. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984); 871 IAC 24.25(1).

Finally, to the extent that the employer might have been in a position to make some change to prevent the claimant from quitting, the claimant did not take the necessary steps with the employer. The employer's policies provide that if an employee is planning on quitting, "before making such a decision please take the time to discuss your reasons for leaving with your supervisor or department manager. Your supervisor may be able to assist you in eliminating the cause for your resignation. . . ." The claimant made comments to his supervisors about the fact that he was walking home, and made inquiries about the possibilities of a first-shift position becoming available in the department, but he did not clearly indicate that he was planning on quitting because of the issue; rather, he believed that the supervisors should have inferred from his frequent comments that he was unhappy enough to quit and that he expected them to do something. When he had the opportunity on February 2 to discuss his concerns with the human resources representative, he failed to take advantage of that opportunity. Further, by further restricting his availability to only first-shift positions in the same department, contrary to his initial statement of availability, the claimant had severely limited the employer's options in trying to retain his employment. The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's March 26, 2004 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 2, 2004, 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/b