

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLIFF R BURRIS**  
Claimant

**APPEAL NO. 09A-UI-05111-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**Original Claim: 02/15/09  
Claimant: Appellant (4)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Cliff R. Burris (claimant) appealed a representative's March 25, 2009 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Menard, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2009. The claimant participated in the hearing. Noah Mayer appeared on the employer's behalf. One other witness, Robert Rankin, was available on behalf of the employer but did not testify. The hearing record was left open for the submission and admission of Claimant's Exhibit A. 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 disqualifying reason?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 4, 2008. He worked full time as a general laborer in the employer's Shelby, Iowa, distribution center. His last day of work was January 23, 2009.

The employer's work place involved substantial outside exposure; during the winter months, the work area was significantly cold. The claimant had been having problems with illness which he attributed to the exposure to the cold, although he had not been advised by a doctor that there was a connection or that he needed to work in a warmer environment. He determined to seek other employment that would not involve the exposure to the cold. After he had received an offer of employment from another employer on January 19, he advised the employer that he was planning on leaving employment. He did not specifically advise the employer he had secured other employer, but indicated on or about January 21 that he was only going to give about a one-week notice. The claimant left work at approximately noon on January 23, as he was again feeling ill. He did not report back for work thereafter.

The claimant worked for a new employer through about February 17, 2009. That employer paid on a weekly basis, and the claimant was receiving \$10.00 per hour. On the claimant's paystub for the pay period for February 8 through February 14, the new employer paid the claimant for 36 hours. His year-to-date pay to that point, however, was already \$1,000.00, so prior to February 8 he would have already worked 64 hours. Assuming he worked the same 36 hours the pay period of February 1 through February 7, he would have worked about 28 hours during the pay period of January 25 through January 31, consistent with the notations made by a claims representative regarding his employment with the subsequent employer that his employment there began on or about January 26. Therefore, it is clear that the claimant started his new employment virtually immediately upon ending his employment with this employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for a non-disqualifying reason. Iowa Code § 96.5-1. One reason a voluntary quit is non-disqualifying is if an employee quits for the reason of accepting and entering into new employment. Iowa Code § 96.5-1-a. However, under these circumstances the employer's account is also not subject to charge.

The claimant did voluntarily quit in order accept a bona fide offer of other employment into which he did virtually immediately enter and perform work. The claimant is not disqualified from receiving benefits as a result of his quit from the employer in this case, but the employer's account will not be charged.

#### **DECISION:**

The representative's March 25, 2009 decision (reference 02) is modified in favor of the claimant. The claimant voluntarily left his employment, but the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits, provided he is otherwise eligible. The employer's account will not be charged.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw