

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

SCOTT A BUTTERS
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TRANSCO RAILWAY PRODUCTS INC
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Appeal Number: 04A-UI-03066-S2T
OC: 02/15/04 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, 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 Quit

STATEMENT OF THE CASE:

Scott Butters (claimant) appealed a representative's March 10, 2004 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Transco Railway Products (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8 and 23, 2004. The claimant was represented by David Hanson, Attorney at Law, and participated personally. The employer participated by Steve Masters, Division Manager; Garry Bahe, Shop Foreman; Tim Stanford, Assistant Division Manager. Lanette Butters, the claimant's wife, observed the hearing. The claimant offered four exhibits which were marked for identification as Exhibits A, B, C and D. Exhibits A, B, C and D were received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 28, 2002, as a full-time car man. The employer's rules allow an employee to open a door to the welder's work area if the area should become smoky. The employee must remain by the door while it is open and close the door when the employee leaves the doorway. In addition, exhaust fans and respirators are available.

On February 17, 2004, the claimant's coworker was reprimanded for leaving the door open. The co-worker left early because he felt ill. The claimant became angry because the work environment was smoky. He approached the shop foreman and started calling him names like "fucker" and "son of a bitch". The claimant told the shop foreman to go to hell. The claimant said that he was sick but the employer felt the claimant was not sick, but angry. The shop foreman, the union representative and the assistant division manager tried to calm the claimant down. The employer told the claimant to take the rest of the day off if he was not happy. The claimant cleaned out his toolbox and left. The employer assumed the claimant had quit and accepted his resignation.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes he did.

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(21) provides:

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:

(21) The claimant left because of dissatisfaction with the work environment.

871 IAC 24.25(37) provides:

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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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 actions. He took all his tools and walked off the job. When an employee quits work because he is dissatisfied with his work environment, his leaving is without good cause attributable to the employer. Likewise, when an employee quits work and the employer accepts the employee's resignation, his leaving is without good cause attributable to the employer. The claimant left work because he was dissatisfied with his work environment and the employer accepted his resignation. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's March 10, 2004 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/kjf