

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

JAMES WAGNER
1430 KENDELL YOUNG APT 16
WEBSTER CITY IA 50595

GORDON FARMS INC
2428 CHASE AVE
DUNCOMBE IA 50532

Appeal Number: 05A-UI-08322-BT
OC: 07/10/05 R: 01
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 96.4-3 - Able and Available for Work
Section 96.5-1 – Voluntary Leaving
871 IAC 24.27 - Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

James Wagner (claimant) appealed an unemployment insurance decision dated August 12, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Gordon Farms, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 29, 2005. The claimant participated in the hearing. The employer participated through owner Marvin Gordon.

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 employed as a part-time laborer from November 2002 through July 11, 2005. He had no transportation to the job site and the employees that were giving him a ride to work stopped picking him up for work. The employer had not agreed to provide transportation for the claimant. The claimant is able to work since he can usually find rides with other employees.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is able and available for work. The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant testified he is able and available to work and his testimony is found credible.

The next issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

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(1) 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:

- (1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

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 did not vocalize that he quit his employment but his actions spoke for him. He demonstrated his intent to quit and acted to carry it out by failing to report for work. The fact that he no longer had transportation is not related to the employer. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him and he has not satisfied that burden. Iowa Code § 96.6-2.

When a claimant quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, the claimant shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27. The claimant is not monetarily eligible as his only wages are from the employer listed herein. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated August 12, 2005, 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.

sdb/pjs