

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY E MORTON
Claimant

APPEAL NO. 10A-UI-15515-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

M D PRODUCTS INC
Employer

OC: 09/26/10
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Jeremy Morton (claimant) appealed a representative's November 4, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with M D Products (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 29, 2010. The claimant participated personally. The employer participated by Mike Dick, Owner/President, and Faith Dick, Office Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 2, 2010, as a full-time welder. The claimant signed for receipt of the employer's handbook on August 13, 2010. The claimant was doing well at work and the employer told him so. On September 28, 2010, the employer gave the claimant a cash bonus for his efforts.

On September 29, 2010, the claimant did not appear at 6:00 a.m., the start of his shift. At 7:30 a.m., the claimant telephoned the employer and indicated he had personal problems and would not be at work. The claimant's wife argued with her brother and the claimant and his family had to move out of his house to a location 40 miles from his workplace. On September 30, 2010, the claimant appeared for work and noticed a note on his time card. It instructed him to return home and call the employer at a specified time. The claimant did so, but the employer was busy at that time. The employer told an employee to call the claimant to say he should appear for work on October 1, 2010. The claimant filed for unemployment insurance benefits.

The claimant did not appear for work on October 1, 2010. The employer called the claimant's telephone and the claimant's wife answered saying the claimant was not available. The employer said the claimant should return to work. The wife argued that the employer fired the claimant. The employer told her that he was not fired, he was a good worker and he should return to work on October 4, 2010. The claimant did not appear for work because his wife told him she fought with the employer on the telephone. On October 11, 2010, the claimant got his last paycheck. The employer told the claimant to return to work and he could have a \$2.00 raise. The claimant left to talk to his wife in the parking lot about the offer and did not return. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without 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(2) 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:

(2) The claimant moved to a different locality.

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 stopped appearing for work. When an employee quits work because he is moving to a different location, his leaving is without good cause attributable to the employer. The claimant left work because he was moving to a different locality. 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 November 4, 2010 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw