

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY W CARDER
Claimant

APPEAL NO. 08A-UI-04322-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 04/13/08 R: 03
Claimant: Appellant (1)R

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Jerry Carder (claimant) appealed a representative's May 1, 2008 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Menard (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 20, 2008. The claimant participated personally. The employer was represented by Michael O'Brien, Store Counsel, and participated by Andy Maw, Assistant General Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

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 August 28, 2002, as a full-time hardware team member and mezz operator. The claimant was concerned that he was being passed over for advancement even though on February 24, 2008, he was given a new job title with increased pay. The claimant did not understand that the increase in pay would appear on his paycheck after two weeks. In addition the claimant needed to babysit his daughter from 3:00 p.m. until 8:00 a.m. each weekday.

On April 3, 2008, the claimant wrote a note to the employer indicating he was resigning on April 17, 2008. The employer asked the claimant to complete a Voluntary Separation form. The claimant listed his reason for resigning as not being given advancements, not receiving his pay and inability to pay for a babysitter. After offering his resignation the claimant left work early one day. On another day he told the employer he could not work because he had to watch his daughter. The claimant stopped appearing for work after November 11, 2008. Continued work was available had the claimant not resigned.

At the hearing the claimant said he quit because his hours were reduced. The claimant averaged 38.98 hours per week from February 28 through March 29, 2008. After the claimant offered his resignation, the claimant worked fewer hours. 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.

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 the claimant's words and actions. The claimant stopped appearing for work and resigned. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The issue of whether the claimant is available for work is remanded for determination.

DECISION:

The representative's May 1, 2008 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/css