

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

CURTIS C WERNING  
5640 FOULK RD  
WATERLOO IA 50702

IOWA MOBILE HOME SERVICE & SUPPLY  
6121 LAPORTE RD  
WATERLOO IA 50701

Appeal Number: 04A-UI-06228-BT  
OC: 01/18/04 R: 03  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Curtis Werning (claimant) appealed an unemployment insurance decision dated May 28, 2004, reference 02, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Iowa Mobile Home Service & Supply (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 June 29, 2004. The claimant participated in the hearing. The employer participated through Timothy and Sandy Brustkern. Employer's Exhibit One was admitted 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 employed as a full-time laborer from April 1, 2002 through May 11, 2004. He was absent on May 10, 2004 due to his child being sick. He had a history of excessive unexcused absenteeism and was told on May 11, 2004 that if he wanted to continue working, he would have to report to work daily and on time. The claimant opted to quit instead of continuing his employment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

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 demonstrated his intent to quit and acted to carry it out when he failed to return to work after May 11, 2004. Although he contends he was discharged, there is no evidence to support that contention. The claimant had been abusing the attendance policy and the employer simply advised the claimant if he wanted to continue working, he had to be there and be there on time. It was the claimant's decision to quit. The claimant's separation from employment was without good cause attributable to the employer. Benefits are denied.

#### DECISION:

The unemployment insurance decision dated May 28, 2004, reference 02, 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/kjf