

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

ARTRICE MARTIN
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Appeal Number: 04A-UI-00080-RT
OC: 11-23-03 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, 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 – Voluntarily Quitting
Section 96.5-2(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Artrice Martin, filed a timely appeal from an unemployment insurance decision dated December 23, 2003, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on January 26, 2004, with the claimant participating. The claimant was represented by Jean Lawrence, Attorney at Law. Mark Bertelli, Owner, participated in the hearing for the employer, City Wide Construction Corporation.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time seasonal laborer from April 28, 2003 until he separated from his employment on August 27, 2003. The claimant had worked for the employer for a previous construction season in 2002.

On August 25, 26, and August 27, 2003, the claimant was absent without notifying the employer. The employer has a rule in its handbook, a copy of which the claimant received and for which he signed an acknowledgement and of which he was aware, stating that three consecutive days as a no-call/no-show without notifying the employer is considered a voluntary quit and that further an employee that is going to be absent needs to call the employer and notify the employer of the absence one hour before the employee's shift. The claimant did not notify the employer on those three days. Work would have been available had the claimant shown up for work as appropriate. The claimant did not show up for work because he had lost his transportation. His car had broken down and apparently the person who had been providing transportation failed to do so. Sometime in September of 2003 the claimant was able to move to a new location and have transportation and called the employer but the employer at that time did not wish to rehire the claimant. The claimant was also absent on August 16, and August 11, 2003 again for a lack of transportation. The claimant did not timely report these absences. From April 28, 2003 to August 27, 2003, the claimant was also absent an additional six days for transportation, only one of which was properly and timely reported to the employer. The claimant might inform the employer of the reason but would do so only the day after his absence. The claimant got at least ten verbal warnings for his absences but no written warnings. The employer had never promised to provide transportation to the claimant and even the claimant conceded it was his responsibility to get to work on time.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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), (4) provide:

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.
- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The first issue to be resolved is the character of the separation. The employer seems to maintain that the claimant quit when he was a no-call/no-show for three consecutive days in violation of the employer's policy providing that three consecutive days absent without notifying the employer is considered a quit. The claimant seems to maintain that he was discharged. The administrative law judge concludes that there is a preponderance of the evidence that the claimant left his employment voluntarily. The claimant was absent for three consecutive days, August 25, 26, and 27, 2003. The claimant concedes that he was absent. The administrative law judge concludes that the claimant was absent these three days without notifying the employer. The claimant testified that he did inform the employer but he equivocated, and the claimant's denial is not credible in view of the testimony of the employer's witness, Mark Bertelli, Owner, who was certain that on those three days the claimant had not notified the employer on any of those three days. The claimant did call the employer back later when he was able to get transportation but by that time the claimant had quit and the employer had no obligation to rehire the claimant and chose not to do so. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant testified that he had lost his transportation. His car broke down and the ride he was using failed to materialize. The claimant testified that he had had a significant problem with transportation in the past. The employer had not promised to furnish transportation to the claimant and the claimant even conceded that it was his responsibility to get to work. Leaving work voluntarily because one is absent for three days or because of a lack of transportation when the employer has not agreed to furnish transportation is not a good cause attributable to the employer. There is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. See 871 IAC 24.32(7). The employer's witness, Mark Bertelli, Owner, credibly testified that the claimant was absent 11 days from April 28, 2003 to August 27, 2003, only one of which was properly reported to the employer and that ten were not properly reported or timely reported to the employer. The claimant concedes that he had these absences because of a lack of transportation but testified that he thought they were properly reported. However, the claimant's testimony as noted above was equivocal and Mr. Bertelli was adamant and convincing that the claimant may have informed the employer of the reasons for

his absences but did so only much later than the employer's rule, which requires notification one hour before the claimant's shift. Mr. Bertelli testified that the claimant frequently notified the employer only the next day when he came to work. The administrative law judge understands an occasional but rare absence or tardy for transportation but believes that 11 absences in four months is excessive and is not for reasonable cause or personal illness. Further, the administrative law judge concludes that these absences were not properly reported. Accordingly, the administrative law judge concludes that the claimant's absences were excessive unexcused absenteeism and disqualifying misconduct and should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct and would still be disqualified to receive unemployment insurance benefits.

DECISION:

The representative's decision of December 23, 2003, reference 01, is affirmed. The claimant, Artrice Martin, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

dj/kjf