

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

RON L THRASH
5232 JONES
OMAHA NE 68106

CRETE CARRIER CORP
PO BOX 81228
LINCOLN NE 68501

Appeal Number: 04A-UI-02070-SWT
OC 01/25/04 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 are 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 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 19, 2004, reference 02, that concluded he had voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on March 16, 2004. The claimant participated in the hearing. Jennifer Hedemann participated on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer from September 12, 1977 to April 10, 2003. The claimant was the safety director for the employer, which was a job that involved light physical activities.

The claimant suffers from a terminal illness not attributable to the employment. Because of this illness and the treatments he was receiving due to the illness, the claimant could no longer

perform the daily tasks required by the job. The claimant's doctor advised him to quit his job due to his illness.

The claimant gave the employer a 30-day notice that he was voluntarily retiring from his job. The employer had continuing work available for the claimant if he had been able to work as safety director. The claimant did not inform the employer that he intended to quit his job if his medical condition was not accommodated.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment 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.

Iowa Code Section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The unemployment insurance rules also provide that a claimant is qualified to receive benefits if compelled to quit employment due to a health condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work made it impossible to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related health condition and that he intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b.

The claimant does not meet the conditions of eligibility either under Iowa Code Section 96.5-1-d or 871 IAC 24.26(6)b. Under Section 96.5-1-d, the claimant would have to be released to return to work and offer to return to work and not be rehired. Under 871 IAC 24.26(6)b, first, the evidence fails to show the illness was caused or aggravated by the employment, which is required to show the health condition was attributable to the employer. Second, the claimant did not seek any accommodation from the employer before quitting.

DECISION:

The unemployment insurance decision dated January 19, 2004, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/b