

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

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Appeal Number: 05A-UI-05739-HT  
OC: 04/24/05 R: 04  
Claimant: Appellant (4)

**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) - Quit

STATEMENT OF THE CASE:

The claimant, Eric Larson, filed an appeal from a decision dated May 16, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 16, 2005 and concluded on July 5, 2005. The claimant participated on his own behalf and was represented by Attorney Steven Ort. The employer, Metrogrou, participated by Human Resources Manager Tami Schull, Director of Manufacturing David Beal, Shift Supervisor Linda Ward and Supervisor Henry Tran. The employer was represented by TALX in the person of Cheryl Rothemeyer. Exhibit A, B and C were admitted into the record.

The claimant had requested three witnesses to be subpoenaed, Ignacio DeJesus, Tony Lee and Clarence Brecount. All three subpoenas were delivered but only Mr. DeJesus responded by providing a telephone number. Mr. DeJesus was not present at the number provided on either June 16 or July 5, 2005. Attorney Ort indicated the claimant was willing to proceed without these witnesses.

#### 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: Eric Larson was employed by Metrogroup from January 2, 2002 until April 29, 2005. He was a full-time operator.

On April 21, 2005, the claimant filled out a request for a transfer and submitted it to Shift Supervisor Linda Ward. He notified her that if he was not transferred out of his present work area, he would be resigning "around the first of May." Ms. Ward took the transfer request and said she would pass it on, but that at present she did not think there were any positions open. She then passed the request on to Director of Manufacturing David Beal.

On April 27, 2005, Mr. Beal and Ms. Ward met with Mr. Larson. At the beginning of the meeting Mr. Beal asked the claimant if he still intended to resign if he was not granted a transfer, and he stated he did. At that point Mr. Beal said the employer accepted his resignation.

Mr. Larson wanted the transfer because he felt his supervisor, Henry Tran, had retaliated against him for a complaint by revoking permission for time off. The human resources department investigated the complaint and determined it was unfounded. Mr. Tran had initially granted the claimant's request for time off over a weekend, until he checked his schedule and realized the claimant had been granted the previous two weekends off, and was therefore excused from mandatory overtime. The work schedule could not accommodate a third weekend off for the claimant.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The claimant made clear his intent to quit if the employer did not agree to his request to be transferred. He was notified there were not jobs available at the time he gave his request to Ms. Ward and did not change his statement. In addition, he was asked again if that was his intent when Mr. Beal interviewed him and he did not revoke his resignation. The employer has the right to accept a resignation when tendered by an employee. Langley v. EAB, 490 N.W.2d 300 (Iowa App. 1992). The quit was due to the employer's refusal to transfer him per his request and there is nothing in the record to establish Mr. Larson was automatically entitled to a transfer upon demand. This is not good cause attributable to the employer and is a disqualifying separation.

However, the employer accepted the resignation immediately instead of waiting until the end of the notice period. Under the provisions of the above Administrative Code section, the claimant would be entitled to benefits until the end of the first week of May 2005.

DECISION:

The representative's decision of May 16, 2005, reference 01, is modified in favor of the appellant. Eric Larson is qualified for benefits for the two-week period ending May 7, 2005. However, he is disqualified after that date until he has requalified by earning ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/pjs