

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

ROBERT L MARSHALL
540 – 9TH ST SE
MASON CITY IA 50401-5854

IMI CORNELIUS INC
ATTN HUMAN RESOURCES
PO BOX 1527
MASON CITY IA 50401

Appeal Number: 06A-UI-03855-DT
OC: 11/20/05 R: 02
Claimant: Respondent (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 – Voluntary Leaving

STATEMENT OF THE CASE:

IMI Cornelius, Inc. (employer) appealed a representative's March 30, 2006 decision (reference 02) that concluded Robert L. Marshall (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 25, 2006. The claimant participated in the hearing. Perry Buffington appeared on the employer's behalf and presented testimony from one other witness, Letha Larson. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on September 18, 1978 in its business manufacturing icemakers and beverage dispensers. He initially worked as a press operator; from approximately 1988 through February 16, 2004, he worked as a tool and die worker. As of February 16, 2004, his tool and die position was eliminated and he moved into a position as a shipping and receiving clerk. He worked full time in that position until approximately July 11, 2005.

On or about July 11, 2005, he was offered a transfer back into an open tool and die worker position; the claimant declined, stating that he wished to stay in the shipping and receiving clerk position. The employer still did require the claimant to fill into the tool and die worker position until July 14, 2005, when the claimant began an approximate eight-month period of combined vacation leave, union leave, and layoff. The employer then determined as of approximately the end of July 2005 to eliminate the vacant tool and die position.

On or about September 1, 2005, the employer informed the claimant that it was also going to eliminate one of the two shipping and receiving clerk positions, and as the more junior clerk, it would be the claimant's position that would be eliminated. On or about September 12, 2005, the claimant was informed that if he took no further action, he would be moved into a production operator position at a rate of pay \$.40 less than he was making at the clerk position; he therefore bid for and was awarded a machine operator/spot welding position which was at the same pay rate as the clerk position had been. However, due to the combination vacation leave, union leave, and layoff, the claimant did not actually report back for any work in any position until February 13, 2006. He worked that day and part of the day on February 14, 2006 in the spot-weld position. He determined that he greatly disliked the spot weld position, particularly in comparison to the tool and die and shipping and receiving clerk positions he had previously held. He therefore decided to quit, and did so.

REASONING AND CONCLUSIONS OF LAW:

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

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). The change in the claimant's most recent job function from a shipping and receiving clerk to either the production operator or the spot welding position was a "drastic modification in type of work" and was therefore a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative's March 30, 2006 decision (reference 02) is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/pjs