

**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**

**JEREMY J SCHMELZER
13745 OLD HWY RD #8
DUBUQUE IA 52002**

**AIRGAS-NORTH CENTRAL INC
c/o TALX UC EXPRESS
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 05A-UI-00136-CT
OC: 11/07/04 R: 04
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) – Voluntary Quit

STATEMENT OF THE CASE:

Jeremy Schmelzer filed an appeal from a representative's decision dated December 27, 2004, reference 02, which denied benefits based on his separation from Airgas-North Central, Inc. (Airgas). After due notice was issued, a hearing was held by telephone on January 20, 2005. Mr. Schmelzer participated personally. The employer participated by Darryl Gardner, Branch Business Manager, and was represented by Debbie Ansel of Talx UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Schmelzer was employed by Airgas from April 1, 2002

until September 17, 2004. He worked full time as a relief driver and in counter sales. He was required to have a valid driver's license in order to perform his job as a relief driver. He was living in Springfield, Missouri, at the time of the employment.

In July of 2004, Mr. Schmelzer was charged with driving while under the influence of alcohol. He immediately notified the employer of the charges. Because there was going to be at least a 30-day period during which his license would be suspended, the employer offered him an alternative position in the fill plant. There would have been no loss of pay or benefits with the transfer. Mr. Schmelzer initially accepted the alternate work but later decided to relocate back to Iowa because he was not going to have transportation to work. He gave the employer two week's notice that he was quitting to move to Iowa. Continued work would have been available if Mr. Schmelzer had not quit.

Mr. Schmelzer did not have other work arranged when he left Airgas. He began other employment on October 8, 2004 and worked for a period of approximately six weeks. He did not earn at least ten times his weekly benefit amount in the new employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Schmelzer was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Schmelzer quit to move to Iowa when continued work would have been available for him with Airgas in Missouri where he had been working. An individual who quits to move to a different locality is presumed to have quit for no good cause attributable to the employer. See 871 IAC 24.25(2). Mr. Schmelzer also quit because he was not going to have transportation to the work site in Missouri. Because Airgas was not responsible for his transportation, a quit for this reason would not be attributable to the employer. See 871 IAC 24.25(1).

For the reasons cited herein, the administrative law judge concludes that Mr. Schmelzer did not have good cause attributable to the employer for quitting. Although he has had subsequent employment, he did not leave his employment with Airgas in good faith for the sole purpose of accepting other employment as required by Iowa Code section 96.5(1). He has not established that he had requalifying wages with the new employer so as to entitle him to benefits pursuant to Iowa Code section 96.5(1)g. Based on the foregoing, benefits are denied.

DECISION:

The representative's decision dated December 27, 2004, reference 02, is hereby affirmed. Mr. Schmelzer quit his employment with Airgas for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/sc