

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CLEOPHUS A GEAR
Claimant

APPEAL NO. 13A-UI-02612-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

OC: 01/20/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated February 21, 2013, reference 01, which denied benefits holding that the claimant quit to move to a different locality. After due notice was provided, a telephone hearing was held on April 1, 2013. The claimant participated. Participating as a witness for the claimant was Ms. Stephanie Jones, the claimant's mother. The employer participated by Mr. Ryan Axman, General Manager.

ISSUES:

At issues are whether the claimant filed a timely appeal and whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Mr. Gear filed an appeal from the adjudicator's determination dated February 21, 2013, reference 01, on March 6, 2013, the same day that he received the decision late via the U.S. Postal Service. The claimant's appeal is considered timely.

Having considered the evidence in the record, the administrative law judge finds: Cleophus Gear began employment with Millard Refrigerated Services Inc. on August 15, 2010. Mr. Gear was employed as a full-time forklift operator and was paid by the hour. His immediate supervisor was Mr. Willis.

Mr. Gear left his employment with this employer on December 14, 2012, after providing a two-week notice of his intention to resign to relocate to the state of Missouri. Work continued to be available to the claimant at the time of his leaving. The claimant relocated to provide assistance to his mother and to seek employment in the St. Louis area.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause that was attributable to the employer. It does not.

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(2) 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:

(2) The claimant moved to a different locality.

In this matter the evidence is undisputed that Mr. Gear left his employment with Millard Refrigerated Services Inc. in order to relocate to a different geographic locality for personal reasons. Ongoing employment was available to Mr. Gear at the time he left this employer. While Mr. Gear's reasons for leaving were undoubtedly good cause reasons from his personal viewpoint, they were not good cause reasons that were attributable to the employer as required by the law. Therefore, the administrative law judge must find that the claimant left employment under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated February 21, 2013, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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