

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

DAVID A TILDEN
820 E 28TH ST
DES MOINES IA 50317

WALKERS INC
MAX I WALKER
4919 UNDERWOOD AVE
OMAHA NE 68132

Appeal Number: 04A-UI-07687-DWT
OC: 06/20/04 R: 02
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:

David A. Tilden (claimant) appealed a representative's July 7, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Walkers, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 5, 2004. The claimant participated in the hearing. Matt Falkstrom, the depot manager, Eldon Rowlett, the sales manager, and Mark Stanek, the controller, appeared on the employer's behalf. 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 his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 20, 2003. The employer hired him to work as a full-time route delivery driver. The first six weeks of employment the employer required the claimant to attend training. During the six-weeks of training, the employer paid the claimant \$475.00 each week. After the claimant completed his training he was on a commission. The claimant, however, understood that he would earn \$550.00 per week from his commissions. The employer did not guarantee the claimant a base wage after the claimant completed his training.

The claimant delivered product to customers on his route. In addition to delivering products, the claimant's job also required him to sell more products to the customer, which then increased the claimant's commission. The claimant averaged around \$520.00 per week, which was not a problem for the claimant.

In early 2004, the employer told the claimant one of his major customers was not going to renew their contract with the employer. The claimant's weekly income was affected by the loss of this customer in late March. The claimant's weekly wage was affected by the loss of this customer.

The claimant believed the employer should guarantee him \$475.00 a week and wanted the employer to put him on this base salary instead of his wages being based only on his commissions. The employer did not realize that the claimant was so dissatisfied with his wages until June 1, when the claimant told Falkstrom in writing that his last day of work would be June 11, 2004. The claimant wrote this in Falkstrom's planner. The claimant told Falkstrom he had to quit unless his weekly salary was increased. During the last six weeks of his employment, the claimant received weekly wages from \$750.00 to \$450.00.

The claimant wanted the employer to guarantee him a \$475.00 base wage. The employer did not do this. On June 7, 2004, the employer offered the claimant another customer on his route. The claimant concluded the additional customer would only amount to a \$35.00 per week increase. The employer understood the claimant was not satisfied with his job even if the employer added this customer to his route. During the week of June 7, the claimant understood the employer would meet his weekly wage demands so the claimant erased his resignation notice from Falkstrom's planner. When the claimant left on June 11, he planned to report to work on Monday, June 14. The employer, however, called the claimant the afternoon of June 11 to let him know, the employer had accepted his resignation and he was no longer an employee.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The claimant voluntarily quit his employment on June 1 when he made a written notation in Falkstrom's planner that his last day of work would be June 11, 2004. The claimant tried to rescind his

resignation sometime during the week of June 7, but the employer did accept the claimant's attempt to rescind his resignation. Since the employer accepted the claimant's June 1 resignation, the claimant voluntarily quit his employment. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant quits with good cause when he quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The claimant asserted he quit because he understood he would receive \$550.00 per week in commissions. The claimant, however, acknowledged the employer did not guarantee him a base wage. As a commissioned route driver, the employer also expected the claimant to increase his commissions by making more sales to the customers he served.

During the last six weeks of the claimant's employment he earned a minimum of \$450.00 a week. During two of these weeks he received \$750.00 and \$550.00 another week. Although the claimant denied the employer offered him another customer on his route, the employer planned to add another customer to the claimant's route. Even though the claimant indicated he was not satisfied until he received a base salary, he understood the employer would work with him to get his weekly wages increased and decided to rescind his resignation notice. Given the fact the claimant was on commission with no guarantee of a base salary, the evidence does not establish that his employment contract had been substantially changed. The claimant quit for reasons that do not qualify him to receive unemployment insurance benefits. This is supported by the fact the claimant tried unsuccessfully to rescind his resignation. As of June 20, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 7, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit on June 1 when he gave the employer a written notice that his last day of work would be June 11, 2004. The employer is not obligated to accept the claimant's attempt to rescind his resignation and did not. For unemployment insurance purposes, the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 20, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjf