

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY P SCHOLTEN
Claimant

APPEAL NO. 10A-UCX-00004-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE BRANDS LLC
Employer

**Original Claim: 12/20/09
Claimant: Appellant (5)**

Section 96.5-1 – Voluntary Leaving
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Gregory P. Scholten (claimant) appealed a representative's January 12, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Advance Brands, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 3, 2010. The claimant participated in the hearing. Kathy Waterman 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.

ISSUES:

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

Is the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on January 5, 2009. He worked full-time as an operator in the employer's food processing facility. His last day of work was November 30, 2009.

On October 6, 2009, he provided the employer with notice that he was quitting as of November 30 to more fully pursue his schooling to become a nurse. He had started his schooling in August 2009, and was finding that it was creating too much conflict with work to work full-time and to go to school full-time. He has begun searching for part-time employment, and is hoping to be able to work about 30 hours per week.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. While quitting to focus on further education is a good personal reason, it is not one that is attributable to the employer. 871 IAC 24.25(26). Quitting to seek other employment is also not a cause attributable to the employer. 871 IAC 24.25(3). The claimant has not satisfied his burden. Benefits are denied.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3.

871 IAC 24.22(2)f provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment during the same hours and for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

The claimant is presently not able and available for work, as he is not available to work on the same full-time basis as when his wage credits were accrued.

DECISION:

The representative's January 12, 2010 decision (reference 01) is affirmed as modified with no effect on the parties. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 30, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He is presently not able and available for work.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw