

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

CHAD A PITTS
2405 PINE CT
VAN METER IA 50261

NEUMANN BROS INC
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-00507-DT
OC: 02/01/04 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 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:

Chad A. Pitts (claimant) appealed a representative's January 10, 2005 decision (reference 11) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Neumann Brothers, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2005. The claimant participated in the hearing. Tammy Wingert appeared on the employer's behalf. This appeal was consolidated for hearing with one related appeal, 05A-UI-00508-DT. 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 13, 2004. He worked full time as an engineer in the employer's general construction contracting business. He was laid off from one project on September 27, 2004, but on October 6, 2004 began working on a parking garage project in Des Moines, Iowa. His last day of work was December 4, 2004.

Several weeks prior to December 4, the claimant had undergone an elective surgery, but had been having some recurring pain for which he had occasionally called off work. On or about December 6, the claimant called the engineering superintendent and told him he would not be in that day due to the pain, and the engineering superintendent told him that was fine, that he should just wait and come back to work when he was ready. The claimant did not return to work, but not because of the medical issue.

Separately the claimant had become upset about the project superintendent's treatment. About once a week, the superintendent had yelled at and cussed at the claimant with no justification, and had been critical of him taking his allowed lunch break and breaks to warm up from the cold. The most recent incident had occurred on or about November 15, 2004. On approximately November 18, the claimant complained to his union business representative about the project superintendent's behavior, and the business representative recommended that the claimant talk to his engineering superintendent about the situation and ask for a transfer to another project. The claimant had previously made reference to the engineering superintendent about his concern regarding the project superintendent's treatment, to which the engineering superintendent had responded by laughing and indicating "that's just how he is."

The claimant again complained to the engineering superintendent on or about November 22, to which he received essentially the same response. However, he did not ask the engineering superintendent for a transfer to another project, he did not ask him to take any action to stop the situation, and did not indicate that he was sufficiently disturbed by the situation that he was contemplating ending his employment. There were no further incidents or discussions regarding the matter after November 22, 2004. After calling in his absence for December 6 due to his surgical pain, the claimant simply determined that he did not wish to return to the situation, and did not thereafter return or contact the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was 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 24.25 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. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). By failing to return to work or contact the employer after December 6, 2004, the claimant did exhibit the intent to quit 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. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). While the claimant's work situation was certainly not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). Further, the most recent incident occurred more than two weeks prior to the claimant's decision to end his employment. Finally, in order for a reason for a quit to be attributable to the employer, an individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996), Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant did not provide this notice and opportunity to the employer. The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's January 10, 2005 decision (reference 11) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of December 6, 2004, 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.

ld/kjf