

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

LORENZO C CLARK
1308 E 18TH ST
DES MOINES IA 50316

ADVENTURE LANDS OF AMERICA INC
PO BOX 3355
DES MOINES IA 50316

Appeal Number: 04A-UI-00028-BT
OC: 11/30/03 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 Quit

STATEMENT OF THE CASE:

Lorenzo Clark (claimant) appealed an unemployment insurance decision dated December 24, 2003, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Adventure Lands of America, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 26, 2004. The claimant participated in the hearing along with his sister, Mary Rief. The employer participated through Matt Krantz, General Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time dishwasher from July 1, 2003 through October 27, 2003. The claimant was released to modified duty on October 25, 2003 due to a work-related-injury. The claimant did not feel he was capable of working modified duty so he did not return to work and stopped calling the employer. The employer could not contact the claimant as he had no phone so the employer waited two weeks and when the employer had not heard from the claimant, it was determined the claimant quit as of October 27, 2003.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated the intent to quit and acted to carry it out when he failed to keep in daily contact with his employer after his physician had released him to return to modified duty. The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code Section 96.6-2. The claimant contends he was discharged but was never told he was discharged. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984). The claimant had been released to return to modified duty. If the claimant felt he was unable to return to work because of his medical condition, it was his duty to at least maintain daily contact with the employer. When he failed to do this, the employer could only conclude he quit. The claimant has failed to establish his separation was with good cause attributable to the employer. Benefits are denied.

DECISION:

The unemployment insurance decision dated December 24, 2003, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

sdb/kjf