

**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**

**ROBERT J OLSON
2626 S CECELIA
SIOUX CITY IA 51106**

**SUNRISE MANOR
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SIOUX CITY IA 51106**

**Appeal Number: 05A-UI-06623-LT
OC: 05-22-05 R: 01
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)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 17, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 13, 2005. Claimant did participate. Employer did participate through Chris Schenkelberg and Donna Baker.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time (20 hours per week) driver through May 22, 2005 when he quit. At the beginning of April 2005, he gave his notice to quit because he was working full time at Wal-Mart and working both places became too stressful. He had asked the scheduler, Black, to reduce his hours to 20 per week so he could get to work on time at Wal-Mart. The employer agreed. Two days later, he was diagnosed with shingles and then asked to cancel the

resignation in order to retain health insurance. Black confirmed that claimant was still employed as of May 10 in an on-call status since he gave his resignation notice. Employer did not plan to have CNAs get their chauffeur's licenses until after claimant gave his notice to quit. Continued work was available but employer had difficulty reaching claimant to provide additional hours of work. Claimant maintains Black did not return his calls, but claimant did not attempt to reach management to resolve the communication problem.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without 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(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998).

Since claimant had already given his notice of resignation and employer had accepted it with the intention of keeping claimant employed in an on-call status until a replacement could be found, employer had no obligation to rescind the resignation acceptance. Beyond that, it appears that claimant was not making himself available by maintaining communication with employer. If he could not contact Black, he should contact someone in management to resolve the issue. Benefits are denied.

DECISION:

The June 17, 2005, reference 02, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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