

**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**

**SCOTT SMITH
4103 SANTA FE TRAIL
DAVENPORT IA 52804**

**A OETZEL CONSTRUCTION INC
6318 WEST RIVER DR
DAVENPORT IA 52802-2249**

**Appeal Number: 04A-UI-00482-ET
OC 12-07-03 R 04
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:

The claimant filed a timely appeal from the January 9, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 4, 2004. The claimant participated in the hearing. Albert Oetzel, Vice-President and Donna Schroeder, Office Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time dump truck driver for A. Oetzel Construction from July 29, 2003 to September 11, 2003. The employer's policy requires employees to call in at 8:00 a.m.

if they have not already been told the employer has work that day and again at 4:30 p.m. to find out if there is work for the following day. The claimant was scheduled to work August 25, 2003, but did not call the employer or show up for work. Office Manager Donna Schroeder called the claimant and left messages for him several times throughout the day and he returned her call at 3:20 p.m. stating his father had a heart attack. On August 26, 2003, he called at 10:09 a.m. and stated he was accompanying his father to Iowa City for medical treatment and he would call between 4:00 p.m. and 5:00 p.m. to find out about working the next few days. The claimant did not call the employer or show up for work again over the following eight days. Ms. Schroeder called the claimant and left several messages for him to call the employer but he did not return her calls. On September 3, 2003, the claimant called Vice-President Albert Oetzel and said he could not work because he had been "beat up" and had a concussion. Ms. Schroeder called and left messages for the claimant September 4 and September 10, 2003, but he did not return her calls and the employer determined he voluntarily quit his job.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2 (amended 1998). While the claimant's father may have suffered a heart attack August 25, 2003, and the claimant may have suffered a concussion a few days later, the claimant still had a responsibility to contact the employer to report his absences. Although the claimant testified he provided a doctor's note to the employer when he had the concussion, the employer does not have a record of the doctor's note or that the claimant came in to bring one, and the employer's documentation and testimony is more consistent and credible than the claimant's testimony. The claimant's actions in failing to call the employer or report for work over a period of several days constitutes a voluntary leaving of employment and the claimant has not met his burden of proving that his leaving was for good cause attributable to the employer. Consequently, benefits are denied.

DECISION:

The January 9, 2004, reference 01, 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.

je/kjf