

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

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Appeal Number: 06A-UI-04226-MT
OC: 03/12/06 R: 01
Claimant: Respondent (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:

Employer filed an appeal from a decision of a representative dated April 6, 2006, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 3, 2006. Claimant participated. Employer participated by Katie Diereks, Assistant Human Resource Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 23, 2006. Claimant had an argument with his supervisor. Claimant believed he was being discriminated against as a black

man. Claimant was called in to the assistant personnel manager's office. Claimant threatened to quit if he was not treated better. Employer interpreted claimant's threat to quit as a resignation. Claimant did not resign.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant quit for good cause attributable to employer. The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when employer terminated the employment relationship because employer interpreted a threat to quit as a resignation. Claimant's version is as credible as employer's version. Claimant has met his initial burden of proof by credible statements that he did not quit but instead threatened to quit. Employer had a second witness to the event. Employer did not make that witness available even though a member of management. Failure to offer evidence in one's possession creates an adverse inference the evidence would be contrary to employer's interest. As such, claimant prevails on this burden of proof issue.

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.

DECISION:

The decision of the representative dated April 6, 2006, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

mdm\kkf