

**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**

**CORNEIL K HELLMERS
2405 E 9TH ST
DES MOINES IA 50316**

**FRENCH WAY CLEANERS/FURRIERS
C/o SCHOENAUER MUSSER &
COMPANY PC
6336 HICKMAN STE 206
DES MOINES IA 50322**

**FRENCHWAY CLEANERS/FURRIERS
403 EUCLID
DES MOINES IA 50313**

Section 96.5-1 – Voluntary Quitting
Section 96.5-2 – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Corneil K. Hellmers, filed a timely appeal from an unemployment insurance decision dated July 9, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on August 5, 2004, with the claimant participating. Mike McBroom, President, and Brad Schaffer, General Manager, participated in the hearing for the employer, Frenchway Cleaners/Furriers. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

**Appeal Number: 04A-UI-07639-RT
OC: 06/13/04 R: 02
Claimant: Appellant (5)**

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)

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time maintenance person from September 9, 1987 until he separated from his employment on June 13, 2004. In 2003, the claimant had missed a great deal of work while on a medical leave. He had returned to work but then again stopped showing up for work on February 26, 2004. Shortly thereafter, on March 1 or 2, 2004, the claimant called and spoke to the employer's witness, Brad Schaffer, General Manager. The employer's other witness, Mike McBroom, President, was present. The claimant indicated to Mr. Schaffer that he needed to take approximately six months off until June 2004 because he was going through a bankruptcy and could not work. Mr. Schaffer relayed this information to Mr. McBroom who then told Mr. Schaffer to tell the claimant that he could come back, but not at his regular job, but as part-time work cleaning up after the plant closed four or five hours per day and perhaps on Saturdays. The claimant had previously informed Mr. Schaffer that he needed to reduce his hours because of his health condition and this was acceptable to Mr. Schaffer. The claimant was then off work until June 2004. On June 13, 2004, the claimant returned to work and spoke to Mr. McBroom. He informed Mr. McBroom that he was ready to come back to work. Mr. McBroom said that he could start the part-time job cleaning as discussed previously. The claimant informed Mr. McBroom that he thought he could have his regular job back. Mr. McBroom explained that he was not able to hold the job and the claimant could not have that job. The claimant refused the part-time work. The claimant never expressed any concerns to the employer about his working conditions nor did he ever indicate or announce an intention to quit if any of his concerns were not addressed by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from the employment was a disqualifying event. It was.

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(20) 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:

- (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant left voluntarily when he asked for and received a leave of absence to attend to a personal bankruptcy and did not promise the claimant his old job back, but promised the claimant part-time work. The claimant seems to maintain that he was discharged or laid off for a lack of work when he returned after a leave of absence on June 13, 2004. Both of the employer's witnesses testified that when the claimant asked for the time off or leave of absence to attend to his bankruptcy that it was approved by the employer. The claimant was not promised at that time that he could have his old job back, but he could work part-time doing cleaning for the employer. The claimant denies this and testified that he was assured that he could have the leave of absence and he could return to his regular job but at reduced hours. The claimant conceded that he wanted reduced hours because of his health. This is also conceded by the employer's witnesses. The claimant then returned to the employer on June 13, 2004 and the employer offered the claimant the part-time work that it had promised. The claimant refused needing more hours. Based upon the evidence here, the administrative law judge is constrained to conclude that the employer did not promise the claimant, when he requested a leave of absence, that he could have his old job back at his regular hours or even hours reduced to 40-45 hours per week, but rather the claimant was informed that he could come back but it would be part-time hours cleaning. When the claimant came back, he refused this work. The administrative law judge concludes that in effect, the claimant voluntarily left his employment on June 13, 2004 when he returned to his employer and refused the part-time work, which had been promised previously. Accordingly, the administrative law judge concludes that the claimant voluntarily left his employment on June 13, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The reason the claimant left his employment was because it was only going to be part-time work and he needed more hours. However, as noted above, the evidence establishes that when the claimant requested and was approved a leave of absence for his bankruptcy, he was not promised his old job back, but only the part-time work and the employer complied with that promise. It appears to the administrative law judge that the claimant quit because of a dissatisfaction with the hours, but he knew what the hours would be when he requested and accepted a leave of absence. This is similar to leaving work because of a dissatisfaction with wages when the rate of pay was known and is not good cause attributable to the employer. See 871 IAC 24.25(13). The administrative law judge concludes that leaving work because only part-time work was available to the claimant is not good cause attributable to the employer. Further, leaving work for compelling personal reasons when the period of absence exceeds ten working days is also not good cause attributable to the employer. The administrative law judge would conclude that the claimant's leave of absence was for personal reasons and not for medical reasons or otherwise. The administrative law judge is not without sympathy for the claimant, but is constrained to conclude that the evidence establishes that the claimant voluntarily quit when he returned to work and refused the part-time work which had been initially promised to him when he requested the leave of absence for personal reasons and this is not good cause attributable to the employer. The claimant never expressed any concerns to the employer about his working conditions nor indicated or announced an intention to quit over any concerns and there is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental. There is not a preponderance of the evidence that the employer ever

breached its contract of hire with the claimant. The contract of hire was amended when the claimant went on a leave of absence with the employer's permission and was promised only part-time work when he returned. The administrative law judge notes that the claimant had himself requested reduced hours.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily on June 13, 2004, without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision dated July 9, 2004, reference 01, is modified. The claimant, Corneil K. Hellmers, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily on June 13, 2004, without good cause attributable to the employer.

kjf/tjc