

**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**

**Appeal Number: 04A-UI-01826-ET
OC 06-15-03 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.**

**MACK RAKIN
1292 ELM STR
DUBUQUE IA 52001**

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.

**APC COMPANY INC
2425 SE OAK TREE CT
ANKENY IA 50021**

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 February 17, 2004, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 11, 2004. The claimant participated in the hearing. Don Kowalske, Superintendent, and Linda Wilson, Benefits 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 production worker for APC Company from July 9, 2001 to December 24, 2003. The claimant is from the Marshall Islands. On November 24, 2003, he

requested a three-month leave of absence to go to the Marshall Islands to take care of some property issues. The employer told the claimant he could use his two-week vacation and it would grant an additional six days of unpaid time off. The claimant began his vacation November 27, 2003. On December 8, 2003, an employee reported seeing the claimant in town. On December 9, 2003, Superintendent Don Kowalske called the claimant's house and left a message asking him to call the employer, but the claimant did not return his call. On December 10, 2003, Mr. Kowalske called the claimant again, but his phone was disconnected. Mr. Kowalske then went to the claimant's house and asked why he was in Iowa rather than the Marshall Islands. The claimant said it was because the employer did not give him the three months off he requested. The claimant then indicated he was planning to go to Hawaii instead. Mr. Kowalske asked why and the claimant stated he was meeting someone. Mr. Kowalske told the claimant he needed to provide his flight itinerary to the employer by December 12, 2003, to demonstrate he was actually going to Hawaii. The claimant asked what would happen if he could not do so and Mr. Kowalske told him he would need to return December 12, 2003, which was the end of his two-week vacation. The claimant then said maybe the employer did not want him to come back. Mr. Kowalske said that was not true, but the employer was short-handed and if he was not going to the Marshall Islands or Hawaii he needed to return after his two-week vacation was over. The claimant did not return or contact the employer and the employer determined the claimant voluntarily left his employment effective December 24, 2003, three days after his originally scheduled date of return.

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(4) provides:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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). The claimant told the employer he had to return to the Marshall Islands to take care of pressing property matters. Based on that information the employer allowed the claimant to take his two-week vacation period and granted him an additional six days of unpaid time off, although the claimant had not provided the required notification. When the employer learned the claimant was still in Dubuque December 8, 2003, it attempted to contact him by phone before going to his house December 10, 2003, to inquire why he had not left town. The claimant stated he did not go to the Marshall Islands because the employer did not allow him to take three months off; but he did not explain why he did not tell the employer that at the time his request for three months off was denied. He then stated he planned to go to Hawaii and the employer asked for proof of that trip. Although the claimant was free to use his two-week vacation however he chose, it was not unreasonable for the employer to ask to see a flight itinerary covering the unpaid time

off because the employer relied on his assertion of an emergency in granting the unpaid leave at a time it was shorthanded. While the claimant asserts that Mr. Kowalske fired him December 10, 2003, Mr. Kowalske credibly testified he did not tell the claimant his employment was terminated but stated he needed to return to work December 12, 2003, or provide proof of his trip to Hawaii. The claimant did not contact the employer or return to work and his failure to do so evinces an intention to voluntarily quit his job. Consequently, the administrative law judge concludes the claimant voluntarily quit his job without good cause attributable to the employer. Benefits are denied.

DECISION:

The February 17, 2004, 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.

je/b