

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BRAD A EAVES
Claimant

APPEAL NO. 07A-UI-09148-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAGEN INC
Employer

**OC: 12/31/06 R: 04
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Leaving/Layoff

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 19, 2007, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 15, 2007. Claimant participated. Employer responded to the hearing notice instructions but was not available when the hearing was called and did not participate.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time concrete finisher from August 6, 2007 until August 9, 2007, when he quit. When he first started working he was assigned to Mineral, Illinois, and complained to his supervisor because he did not like working with non-English speaking employees. His supervisor offered work at a transfer location in Burlington, Iowa, that also happened to be closer to his home. He thought he would start the following Monday so left the Mineral work site and waited for a call from April Browser, who handled the transfer paperwork at the main office. Browser told him on the following Monday that it would be a couple of weeks before he could work at that assignment. He did not contact his site supervisor in Mineral to work during the pendency of the transfer, nor did his supervisor advise him work was available during that time. He attempted to communicate with Browser a couple of times to no avail, so he started looking for other work, which he found and started on September 17 at Siemens in Fort Madison, Iowa.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code § 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(6), (21) 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 § 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 § 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:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993).

Claimant's dislike of working with non-English speaking coworkers was NOT a good cause reason attributable to the employer for leaving employment. However, he did meet the requirements of *Cobb* by discussing his concern with his supervisor, who granted his request for a transfer to another work location. Since employer did not provide the promised transfer to another work site within the estimated two weeks or by the time claimant found other employment after five weeks, the separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The September 19, 2007, reference 03, decision is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw