

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES B SHROPSHIRE
Claimant

APPEAL NO: 12A-UI-01320-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAKE MANAWA NISSAN INC
Employer

**OC: 01/01/12
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

James B. Shropshire (claimant) appealed a representative's February 1, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Lake Manawa Nissan, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 28, 2012. The claimant participated in the hearing. Heath Thomas appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on or about February 1, 2011. As of about October 21, 2011 he worked full time as a sales representative in the employer's used car department. His last day of work was December 15, 2011. He voluntarily quit as of that date, having given notice in about mid-November 2011.

The claimant's son and daughter-in-law had been living in a home in Groveland, Florida. They were going to be moving to a new home and job in Homestead, Florida. The claimant and his wife had agreed to move to Florida and take over the house in Groveland, Florida until it could be sold. The claimant had contacted a car dealership near Groveland, who had told him that it might be able to employ him, and to check in for potential employment if he did move to Florida. The claimant and his wife left Omaha around December 20, and arrived in Florida around December 22. Upon their arrival, they learned that the new job and home in the Homestead

area had dissolved. Further, they learned that their son and daughter-in-law had decided to move back to Nebraska.

The claimant and his wife stayed in the house in Groveland and began searching for employment; however, neither of them was successful. The dealership the claimant had previously spoke to in fact did not have any positions available when he contacted them. When the claimant was unsuccessful in finding new employment, he contacted his prior employer and explained his situation, indicating he would likely need to file for unemployment insurance benefits; the owner/manager of the business indicated to him that the employer would not protest his claim, so he established a claim effective January 1, 2012.

When the claimant was still unable to find employment in Florida and his claim for unemployment insurance benefits was denied, he contacted the employer on or about February 1 and asked if he would be rehired if he returned to Omaha/Council Bluffs. The employer agreed that it would rehire him if he returned. The claimant and his wife left Florida on or about February 11. Upon arriving back in Omaha, the claimant again contacted the employer to report he had arrived, and it was agreed that the claimant would start back to work in another department; his first day in the new employment was February 25, 2012.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant should be eligible to receive unemployment insurance benefits because the employer agreed not to protest the claimant's claim. Claimants are not automatically qualified in the absence of a protest. *Kehde v. Iowa Division of Job Service*, 318 N.W.2d 202 (Iowa 1982). Where there are clear facts apparent to the Agency upon the filing of the claim which call the claimant's eligibility into question, whether employer protested the claim or not is immaterial. The employer's failure to protest or promise not to protest is not binding upon the Agency.

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving and moving to another area for potential employment elsewhere where there has not been at least a firm and definite offer and acceptance of new employment is not a reason which will allow benefits. 871 IAC 24.25(2), (3). Leaving because of serious family needs or compelling personal reasons are not reasons which will allow benefits, particularly where the absence from the prior employment exceeded ten days. 871 IAC 24.25(20), (23). While the claimant did have good personal and family reasons for leaving his employment, he has not satisfied his burden to establish that the reasons are such that they can be attributed to the employer. Benefits are denied.

DECISION:

The representative's February 1, 2012 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of December 15, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is then otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs