

**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**

**ERIC J MATHANY
213 CLAYTON ST
OTTUMWA IA 52501**

**BLOOMFIELD FOUNDRY INC
PO BOX 200
BLOOMFIELD IA 52537-0200**

**SARAH WENKE
ATTORNEY AT LAW
LEGAL SERVICES CORPORATION
OF IOWA
112 E 3rd ST
OTTUMWA IA 52501**

**Appeal Number: 04A-UI-09883-RT
OC: 08/22/04 R: 03
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.**

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 Quitting

STATEMENT OF THE CASE:

The claimant, Eric J. Mathany, filed a timely appeal from an unemployment insurance decision dated September 10, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on October 5, 2004, with the claimant participating. The claimant was represented by Sarah Wenke, Attorney at Law. Jack Matheny, General Supervisor, and Pat Stephens, Production Manager, participated in the hearing for the employer, Bloomfield Foundry, Inc.

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 secondary grinder from April 8, 2002 until he separated from his employment on August 23, 2004. On that occasion, the claimant took his equipment into the office of Jack Matheny, General Supervisor and one of the employer's witnesses, and handed his equipment to Mr. Matheny. Mr. Matheny asked the claimant if he was sure and the claimant said, "Yes, Pat said so" (referring to the employer's witness, Pat Stephens, Production Manager). On that day, the claimant came to work and did not see Mr. Stephens, but took his equipment out of his locker and delivered it to Mr. Matheny and then left. The claimant has never returned to the employer and offered to go back to work. Shortly thereafter, Mr. Stephens came looking for the claimant and asked Mr. Matheny about the claimant. Mr. Matheny told Mr. Stephens that the claimant had left.

On the evening of August 18, 2004, the claimant took his friend and co-worker to the hospital and was there with him until the early morning hours of August 19, 2004. The claimant then went to his employer and talked to the plant superintendent and told him that he had taken the co-worker to the hospital and that he needed to go home and rest. The plant superintendent said that would be acceptable. The claimant was then absent on August 19, 2004. The claimant returned to work on August 20, 2004 and worked the entire day. At some point during that day, the claimant talked to Mr. Stephens. Mr. Stephens told the claimant that the co-worker friend did not have a job and if he, Mr. Stephens, had been there the day before, the claimant also would not have had a job. Nevertheless, the claimant went to work and continued to work and worked all day.

Approximately, one and one-half months prior to his separation, the claimant had expressed some concerns to the employer about some wiring matters and had indicated an intention to quit over these matters but the employer had addressed the claimant's concerns and fixed the wiring and the claimant did not quit at that time. The claimant expressed no other concerns and did not threaten to quit over other matters. The claimant received a written warning in 2002 regarding attendance. The claimant also received an oral warning approximately two to two and one-half weeks prior to his separation for being in the core room when he was not suppose to, but the claimant was not discharged at that time. The claimant also received a written warning on March 4, 2004 for running in to a ventilator duct while operating a skid loader. However, the claimant was not discharged at that time either. On August 23, 2004, the claimant did go through the core room, but this is normal in getting to the claimant's work site and the claimant was not discharged for this reason. Nobody said anything to the claimant about going through the core room on August 23, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant's separation from 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 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.

871 IAC 24.25(21), (22), (28) provide:

- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (28) The claimant left after being reprimanded.

The first issue to be resolved is the character of the separation. The employer is adamant that the claimant voluntarily quit when he turned in his equipment on August 23, 2004. The claimant is adamant that he was discharged when his supervisor, Pat Stephens, Production Manager and one of the employer's witnesses, told the claimant to turn in his equipment. Although it is a very close question, the administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left his employment voluntarily. Mr. Stephens credibly testified that he had no conversation with the claimant on August 23, 2004 and did not see the claimant and denied telling the claimant to turn his equipment in. Mr. Stephens testimony is confirmed by the testimony of the employer's other witness, Jack Matheny, General Supervisor, who credibly testified that Mr. Stephens came to him on August 23, 2004 looking for the claimant expecting the claimant to be at work after the claimant had left. The claimant testified that he came to work on August 23, 2004 and was starting to work when Mr. Stephens came up to him and told him to turn in his equipment. The claimant believed that this was a discharge and turned in his equipment and left. The claimant's testimony here is not as credible as that of Mr. Stephens and Mr. Matheny as noted above. The claimant testified that on August 20, 2004, Mr. Stephens had come up to him and had told him that if he had been there the prior day when the claimant took off because he had been up late the night before with his friend and co-worker in the hospital, that the claimant would not have had a job. Mr. Stephens concedes to this conversation. However, the claimant was not discharged at that time. He worked the entire day on August 20, 2004. If Mr. Stephens was going to discharge the claimant he would have told him that on August 20, 2004. The claimant testified that he would have had no other reason to come to work on August 23, 2004 if he was going to quit. However, the claimant testified that he had his employer's equipment in his locker and the claimant would have had to have gotten the equipment out of his locker and turn it in to the employer and also the claimant may have had to retrieve personal items from his locker. It also may be that the claimant had not decided to quit until he got to work. The administrative law judge further notes that even the claimant concedes that Mr. Stephens never told him that he was fired or discharged but just testified that he believed that he was fired or discharged because of the comments made by Mr. Stephens on August 20, 2004, but it is clear that on August 20, 2004 the claimant was not discharged because he worked that entire day. Also, the claimant first testified that he and Mr. Matheny

had no conversation but that the claimant simply gave Mr. Matheny his equipment. Later, the claimant said, Mr. Matheny asked him "are you sure" and the claimant said, "Yes, Pat said so." Mr. Matheny's question to the claimant about "are you sure" really indicates that the claimant was quitting and the claimant seems to confirm this. If the claimant was not quitting, and the conversation with Mr. Stephens really occurred, the claimant surely would have asked Mr. Stephens if he was being discharged. In the claimant's appeal letter, the claimant states that he was "tricked into leaving by Pat Stephens." Again, this appears to indicate that the claimant believed that actually he quit. Although it is a very close question, on the evidence here, the administrative law judge must conclude that the claimant left his employment voluntarily on August 23, 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 claimant did not provide any reasons attributable to the employer for his quit other than that his friend and co-worker had been discharged. However, this discharge was unrelated to the claimant and is not good cause for the claimant's quit. It appears to the administrative law judge that the claimant, contrary to the claimant's testimony, was upset at his friend being discharged and he quit as well. This is not good cause attributable to the employer. There is also some evidence that the claimant had a personality conflict with his supervisor, Mr. Stephens, but this is not good cause attributable to the employer. There is also some evidence that the claimant may have been dissatisfied with his working conditions and was reprimanded and he left as a result, but these are not good cause attributable to the employer either. There is not a preponderance of the evidence that claimant's working conditions are unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about his working conditions or threatened or indicated an intention to quit over these concerns except for a concern expressed about wiring which the employer addressed and fixed.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily 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 September 10, 2004, reference 01, is affirmed. The claimant, Eric J. Mathany, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

kjf/b