

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARION GENOVESE
Claimant

APPEAL NO. 06A-UI-09666-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
LABOR WORLD OF IOWA
Employer

OC: 04-02-06 R: 02
Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 22, 2006, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 17, 2006. Claimant participated. Employer 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 temporary laborer on day-to-day assignments until mid September 2006, when he quit to move to and work in Arizona and Montana. He exhausted his benefits as of August 26, 2006. He intends to return to Iowa to work in the spring of 2007. He did not quit on April 4, 2006, but told employer he would not report to the office every day but would be available for work if they called him, since there had not been much work and it was difficult, expensive, and time consuming for him to travel to the office from the opposite side of town just to check in when there was often no work. Employer had called him with job assignments in the past without requiring him to physically check in at the office. Employer did not call him after April 4 with any job assignments, nor did it advise him he was discharged or otherwise separated from his employment. Claimant was willing and available to work for employer and did conduct other work searches as well.

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, but not until September 15, 2006.

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(2) 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:

(2) The claimant moved to a different locality.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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 Bd.*, 506 N.W.2d 445 (Iowa 1993). Claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment if employer had or should have had reasonable knowledge of the condition. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

While claimant's decision to quit to move to another area was based upon good personal reasons, it was not a good-cause reason attributable to the employer for leaving. Benefits must be denied as of September 17, 2006.

DECISION:

The September 22, 2006, reference 02, decision is modified in favor of the appellant. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld effective September 17, 2006 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. Since claimant received no benefit payments after August 29, 2006, no overpayment applies.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw