

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

ROBBIE D HALL
800 N 35TH ST APT #5
COUNCIL BLUFFS IA 51501

PILOT TRAVEL CENTERS LLC
C/O THOMAS AND THORNGREN INC
PO BOX 280100
NASHVILLE TN 37228-0100

Appeal Number: 04A-UI-09151-RT
OC: 07-25-04 R: 01
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, Robbie D. Hall, filed a timely appeal from an unemployment insurance decision dated August 20, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on October 4, 2004, with the claimant not participating. Although the claimant had called in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge called that number at 11:03 a.m., it reached a voice mail identifying the telephone number as that of, among others, “Robbie.” The administrative law judge left a message that he was going to proceed with the hearing and if the claimant wanted to participate, he needed to call before the hearing was over and the record was closed. The hearing began when the record was opened at 11:05 a.m. and it ended when the record was closed at 11:17 a.m. and the claimant had not called during that

time. A. J. Hays, Manager, participated in the hearing for the employer, Pilot Travel Centers, LLC. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time diesel cashier, working full-time hours, from May 2, 2003 until he voluntarily quit on July 30, 2004. The employer asked the claimant to work on July 30, 2004 and he agreed but then he did not show up for work and did not notify the employer. The claimant had a car parked in the employer's lot and the employer's witness, A. J. Hays, Manager, who had had to come in unexpectedly to work the shift for the claimant, saw the claimant in this car. She pulled up beside the claimant and at first he ignored her. However, the claimant eventually came over to her car. She asked the claimant why he had not been at work and he stated that wasn't it obvious that he had quit. The claimant again repeated that he had quit because the employer expected too much. The claimant had had attendance problems but he was not discharged over that and, in fact, was going to be given a raise and a new position. The employer had offered a different position to another employee that the claimant wanted but the claimant was not qualified for that position. The claimant was displeased at this. The claimant had never been promised that position. The claimant had expressed some concerns to the employer about a manager but the employer had addressed those concerns by removing the claimant from working during the manager's shift and then that manager ultimately left. The claimant never specifically threatened to quit over specific problems he was having at work but did, when he was having a bad day, indicate that he wanted to quit.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal 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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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(6), (21), (22), (27), (28) provides:

- (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.
- (22) The claimant left because of a personality conflict with the supervisor.
- (27) The claimant left rather than perform the assigned work as instructed.
- (28) The claimant left after being reprimanded.

The employer's witness, A. J. Hays, Manager, credibly testified, and the administrative law judge concludes, that the claimant voluntarily left his employment on July 30, 2004. The claimant concedes at fact-finding that he quit. 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 participate in the hearing and provide reasons attributable to the employer for his quit. Ms. Hays credibly testified that the claimant quit when he told her that the employer expected too much. She also credibly testified that she believed the claimant quit because the employer had offered a position to another employee and the claimant wanted that position. However, the claimant was not qualified for that position and had not been promised that position. Nevertheless, the employer had decided to give the claimant a raise and another position. The claimant had had attendance problems but was not discharged. The claimant had had problems with the manager and had expressed concerns to the employer about this but the employer had addressed those concerns by removing the claimant from the shift where that manager worked and ultimately the manager left. The claimant never specifically indicated an intention to quit if any specific problems he was having at work were not addressed by the employer.

The administrative law judge concludes that there is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. There is no evidence that the claimant was ever promised any particular position that he did not receive. It appears that the claimant left his employment because he was dissatisfied with his work environment and he left

rather than perform the assigned work as instructed but these reasons are not good cause attributable to the employer. There was also some evidence that the claimant was unable to work with another employee or supervisor but leaving work because of an inability to work with other employees or because of a personality conflict with a supervisor is not good cause attributable to the employer. The claimant may have been reprimanded for his attendance or other matters but leaving work voluntarily because of a reprimand is also not good cause attributable to the employer.

In summary, and for all of 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 of August 20, 2004, reference 01, is affirmed. The claimant, Robbie D. Hall, 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.

pjs/b