

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY R FREEBORN
Claimant

APPEAL NO. 13A-UI-01268-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

**OC: 01/06/13
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 31, 2013, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 4, 2013. Claimant participated. Employer failed to respond to the hearing notice and did not participate. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 16, 2012. Claimant worked full time as a boiler engineer. Claimant had for the entire period of employment had summers off. Claimant worked a family business at the state fair. Employer had always allowed claimant to take time off so he could run the family business at the state fair. Claimant asked for vacation covering the state fair 2012. Employer denied the vacation. Claimant then asked for personal family leave for two weeks without pay. The collective bargaining agreement did not allow employer latitude in denying unpaid personal leave. Employer again denied the request even though it was in violation of contract. Employer told claimant that if he had his building cleaned he could take the time off. Claimant was again told that he could take the time off. The supervisor then told claimant that if he did not work to turn in a resignation. Claimant then quit due to the refusal to allow time off during the summer in violation of prior agreement and the collective bargaining agreement.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of a change in the contract of hire. Employer had always allowed claimant to take time off during the state fair. Furthermore, employer violated its collective bargaining

agreement in not allowing claimant two weeks leave of absence without pay. This is a separation for good cause attributable to employer. Benefits allowed.

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.

DECISION:

The decision of the representative dated January 31, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css