

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY L SIMMONS
Claimant

APPEAL NO. 12A-UI-11867-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MORGAN TIRE & AUTO
TIRES PLUS**
Employer

OC: 09/02/12
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Jeremy Simmons (claimant) appealed a representative's September 21, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Morgan Tire & Auto (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 29, 2012. The claimant participated personally. The employer participated by Eric Miles, assistant district manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 11, 2001, as a full-time store manager. At the time of hire, the claimant lived near his work. In approximately 2008, the claimant moved more than an hour away from his workplace.

The claimant received the first part of a two tier raise in May 2011. He expected to receive the second part of the raise on May 2012. The employer felt the claimant's performance did not merit the second part of the raise. At the end of July 2012, the claimant told the employer that he needed the raise or he would quit due to the cost of commuting. The employer did not approve the claimant's raise. The claimant's last day of work was August 30, 2012. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

871 IAC 24.25(13) and (30) provide:

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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

. . . .

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. When an employee quits work because he is dissatisfied with his wages and knew the rate of pay when hired, his leaving is without good cause attributable to the employer. Likewise, when an employee quits work because of a known commuting distance, his leaving is without good cause attributable to the employer. The claimant left work because he wanted a raise even though he knew the hourly wage when he was hired. He also quit because of the commuting distance to work even though he knew that distance at the time he moved. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's September 21, 2012 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw