

**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**

**RAYMOND E WAGNER
210 WEAVER RD
BLOOMFIELD IA 52537**

**MIKE BROOKS INC
HWY 14 SOUTH
PO BOX 443
KNOXVILLE IA 50138-0443**

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ATTORNEY AT LAW
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NEWTON IA 50208-0726**

**Appeal Number: 04A-UI-04122-AT
OC: 01-04-04 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 Quit

STATEMENT OF THE CASE:

Raymond E. Wagner filed a timely appeal from an unemployment insurance decision dated April 1, 2004 reference 02 which disqualified him for benefits. After due notice was issued, a telephone hearing was held April 26, 2004 with Mr. Wagner participating and being represented by Dennis K. Chalupa, Attorney at Law. His daughter, Laura Davidson, testified on his behalf. Safety Director Kevin Andrew participated for the employer, Mike Brooks, 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: Raymond E. Wagner was employed as an

over-the-road truck driver by Mike Brooks, Inc. from March 8, 2004 until he resigned on March 13, 2004. After two days of orientation, Mr. Wagner drove a total of four days. While on route, dispatch asked Mr. Wagner if he could complete a delivery earlier than originally scheduled. Mr. Wagner did so. However, to complete the run in the time requested by dispatch, he had to run illegally, driving more hours than allowed by the United States Department of Transportation. The company did not force him to run illegally.

Mr. Wagner resigned without first contacting Safety Director Kevin Andrew, the person to whom he should have spoken about his concerns with the run. Mr. Andrew does not condone running illegally or forcing drivers to run illegally. He would have intervened if Mr. Wagner had advised him of the situation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Wagner left work with good cause attributable to the employer. It does not.

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.

In order to allow benefits, the administrative law judge must find that a reasonable claimant would have resigned under the circumstances and that the circumstances constituted good cause attributable to the employer, not merely good personal cause. See O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993). An individual who resigns because of unlawful working conditions leaves work with good cause attributable to the employer. See 871 IAC 24.26(3). On the other hand, one who leaves because of mere dissatisfaction with the work environment leaves work without good cause attributable to the employer according to 871 IAC 24.25(21).

If the evidence established that the employer in fact required Mr. Wagner to run illegally, the administrative law judge would allow benefits. The evidence does not establish this, however. It establishes only that the employer asked if Mr. Wagner could deliver the load early. His own testimony indicated that there was no threat of any consequences if he declined. Testimony from Mr. Andrew establishes the existence of a procedure whereby shipments can be expedited by switching drivers if one is scheduled to run out of hours before delivery can be completed. Mr. Wagner chose to exceed to the request but then submitted his resignation without talking to Mr. Andrew. The administrative law judge concludes that a reasonable claimant would not have resigned under these circumstances. Benefits are withheld.

DECISION:

The unemployment insurance decision dated April 1, 2004 reference 02 is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sb/b