

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS D GILPIN
Claimant

APPEAL NO. 06A-UI-10028-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE MAYTAG CO
Employer

OC: 03/26/06 R: 03
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Thomas Gilpin filed a timely appeal from the October 6, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 30, 2006. Mr. Gilpin participated. Labor Relations Analyst Mary Jamison represented the employer.

ISSUE:

Whether Mr. Gilpin voluntarily quit the employment with Maytag for good cause attributable to the employer.

Whether Mr. Gilpin voluntarily quit the employment with Maytag to commence new employment and then separated from the new employment after accepting an offer of employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Gilpin was employed by The Maytag Company from September 1987 until July 3, 2006. Mr. Gilpin quit because general morale at Maytag was low. The employer continued to have work available to Mr. Gilpin at the time he quit. On June 23, 2006, Mr. Gilpin notified Labor Relations Analyst Mary Jamison that he would be leaving the employment effective July 3. At the time Mr. Gilpin separated from the employment with Maytag, he intended to go to work for an over-the-road trucking firm. The plan was for Mr. Gilpin and his wife to work as a team. Mr. Gilpin and his wife traveled to Utah to participate in an employer-sponsored truck driving school. The schooling began on July 19 and lasted for four weeks. Mr. Gilpin completed the truck driving school. The employer would not allow Mrs. Gilpin to work for the employer until a health condition resolved. The health condition was expected to resolve within 6 to 12 weeks. Though Mr. Gilpin had participated in schooling provided by the employer, Mr. Gilpin had not yet been hired by the employer. However, the new employer had work available for Mr. Gilpin. Mr. Gilpin did not want to go to work for the employer without his wife also going to work for the employer. Mr. Gilpin made the decision to return to Iowa with his wife. On September 9, Mr. Gilpin commenced truck driver training at Indian Hills Community College. Mr. Gilpin is about to graduate from that training.

REASONING AND CONCLUSIONS OF LAW:

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 general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Mr. Gilpin quit for personal reasons, including dissatisfaction with the general work atmosphere. A quit for such a reason is presumed to be without good cause attributable to the employer and the administrative law judge concludes the quit was in fact without good cause attributable to the employer. See 871 IAC 24.25(21). Accordingly, the quit from Maytag was a disqualifying event and Mr. Gilpin would ordinarily be disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Gilpin.

Iowa Code Section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:
 - a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

- (5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

871 IAC 23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

The evidence indicates that Mr. Gilpin did in fact quit the employment at Maytag for the purpose of going to work for another employer. However, Mr. Gilpin had not accepted an offer of employment with the new employer. Mr. Gilpin had merely completed the employer-sponsored training upon which an offer of employment would be conditioned. Mr. Gilpin did not accept employment. This was due to his spouse's health condition and his decision not to embark on the employment without her. The administrative law judge concludes that Mr. Gilpin does not qualify for benefits under the new employment exception contained at Iowa Code section 96.5(1)(a).

DECISION:

The Agency representative's October 6, 2006, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. The claimant did not accept new employment and, therefore, is not eligible for benefits under Iowa Code section 96.5(1)(a).

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw