

**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**

**BRIAN D ESKILDSEN
2726 – 16TH ST SW
MASON CITY IA 50401**

**WOODHARBOR MOLDING &
MILLWORK INC
3277 NINTH ST SW
MASON CITY IA 50401**

**Appeal Number: 04A-UI-03033-RT
OC: 02-15-04 R: 02
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, Brian D. Eskildsen, filed a timely appeal from an unemployment insurance decision dated March 11, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on April 8, 2004 with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Diane Kafer, Human Resources Assistant, and Brian Hall, Product Engineering Manager, participated in the hearing for the employer, Woodharbor Molding & Millwork, Inc. The administrative law judge takes official notice of Iowa

Workforce Development Department unemployment insurance records for the claimant. Employer's Exhibits 1 through 4 were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 through 4, the administrative law judge finds: The claimant was employed by the employer as a full-time drafter on its door line from September 9, 2002 until he voluntarily quit on September 16, 2004. At that time, the claimant tendered his written letter of resignation of the same date as shown at Employer's Exhibit 1. The claimant purportedly resigned because he was transferred to Northwood in October 2003 for two months but learned that it was going to be extended. However, the claimant never expressed any real concerns to the employer about the transfer or the extension of his time in Northwood. As shown at Employer's Exhibit 2 in an exchange of e-mails between the claimant and Brian Hall, Product Engineering Manager, the claimant merely inquired as to the length of the transfer. The claimant does not really appear to express any concerns about the transfer or the extension. These e-mails were the only occasions when the claimant mentioned his transfer or the extension and does not appear to have otherwise expressed any concerns. There is no evidence that the claimant ever indicated or announced an intention to quit if any of his concerns were not addressed by the employer. In fact, had the employer known of the claimant's specific concerns, the employer would have tried to get the claimant back to Mason City as promptly as possible. This is confirmed by e-mails at Employer's Exhibit 4. In fact, at one point, the claimant even indicated that he wanted to remain in Northwood as shown at Employer's Exhibit 3.

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 24.25(1) 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(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

The administrative law judge concludes that the claimant left his employment voluntarily when he offered a written resignation as shown at Employer's Exhibit 1. 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 failed to participate in the hearing and provide reasons attributable to the employer for his quit. The employer's witnesses credibly testified that the claimant appeared to quit because he was transferred to Northwood and this transfer was extended. However, the administrative law judge is not even convinced that the claimant quit for this reason because of Employer's Exhibit 3, which indicates that at one point, at least, the claimant wanted to remain in Northwood. It appears that the claimant also had some reservations about returning to Mason City as shown at Employer's Exhibit 4. In any event, the claimant consented to the transfer to Northwood and only appears, at most, to inquire about an extension of the two-month transfer there. However, the claimant never expressed any specific concerns to the employer about his transfer or his extension as shown at Employer's Exhibit 2. Further, the claimant never indicated or announced an intention to quit if his concerns were not addressed by the employer. In fact, the employer's witnesses testified that had they known the claimant was going to quit they would have attempted to get him back to Mason City and this is confirmed by e-mails at Employer's Exhibit 4. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental and there is not a preponderance of the evidence that the employer intentionally or willfully breached its contract of hire with the claimant. It appears that the claimant may have been dissatisfied with his work environment but this is not good cause attributable to the employer.

Accordingly, and for all 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 March 11, 2004, reference 01, is affirmed. The claimant, Brian D. Eskildsen, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

tjc/kjf