

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

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Appeal Number: 04A-UI-00293-H2T
OC 11-30-03 R 01
Claimant: Appellant (2)

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 Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 6, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 12, 2004. The claimant did participate and was represented by Richard Sturgeon of Workers Have Rights Too. The employer did participate through Joe Garthwright, President, Linda Waring, Office Manager and was represented by Robert Green, Attorney at Law.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a truck driver full time beginning July 5, 2001 through December 8,

2003 when he voluntarily quit because his job duties were being changed. The claimant was hired to be a dump truck driver. He worked through the construction seasons of 2001 and 2002. The claimant had been laid off in the fall of his previous two years of employment and did not do mechanical work for the employer during the layoff period nor did he push snow. He was called back by the employer each spring and resumed work as a dump truck driver. On November 24, 2003, a meeting was held by the employer wherein all of the employees, including the claimant, were told that their job duties were going to change in the future. The claimant was going to be required in the future to do mechanical work and to do snow removal. Employees were told that if they did not like the new changes then they should look for work elsewhere. After November 24, 2003, the claimant never again drove a truck for the employer. The employer placed the claimant on layoff beginning on November 24, 2003. On December 8, 2003, the claimant was called by the employer and was asked to return to the work in the shop performing mechanical duties. The claimant worked on December 4, 2003 on his own piece of equipment but did not return to work in the shop when the employer called him on December 8, 2003 to work on a bumper. The claimant was hired to be a truck driver and the employer changed his duties to mechanical responsibilities that the claimant was neither qualified to perform, nor desired to perform. The claimant was also going to be required to perform snow removal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

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.

The claimant was hired to be a dump truck driver and for two construction seasons worked as a dump truck driver. The claimant never worked as a mechanic in the shop, nor did he ever perform snow removal duties. The claimant had performed light mechanical work on his own truck as was customary. The employer employed specific individuals who were mechanics and performed all of the mechanical duties as their sole job responsibility. The employer has clearly indicated that the job duties of the claimant were going to change as of November 24, 2003 when he would be required to perform snow removal and to perform mechanical work in the

shop. Such a change in duties and responsibilities from the original terms of hire is considered substantial. Benefits are allowed.

DECISION:

The January 6, 2004, reference 01, decision is reversed. The claimant voluntarily left employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjf