

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

DAVID R MITCHELL
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DES MOINES IA 50310

HOFER, CHARLES
CHARLES HOFER TRUCKING
3745 N 83RD AVE W
BAXTER IA 50028

Appeal Number: 06A-UI-04613-SWT
OC: 04/24/05 R: 02
Claimant: Respondent (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:

The employer appealed an unemployment insurance decision dated April 27, 2006, reference 03, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on May 16, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Jerry Hofer participated in the hearing on behalf of the employer with a witness, Erica Hienstra. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a truck driver from October 10, 2005, to March 24, 2006. When the claimant was hired, he accepted the employment because he was informed that his driving assignments would allow him to be home every night and on weekends. The claimant needed a job that did not require him to be out-of-town overnight because he suffers

from sleep apnea and he is required to sleep with a breathing machine a certain number of nights per week in order to remain medically qualified to drive.

Starting in December 2005, the employer did not have the local grain hauling that the claimant had been hired to perform. Instead, the claimant was dispatched to take out-of-town loads that required him to be on the road overnight several times per week. The claimant complained about the lack of local hauling, but the employer did not have any other loads available so the claimant left his job.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without 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 employer represented at the time that the claimant was hired that he would be given local hauling that would allow him to be home at night and on the weekends. The claimant needed a job that would not require him to be out-of-town overnight on a regular basis for health reasons. Therefore, the claimant left employment due to a substantial change in his contract of hire. The law does not require that the cause for quitting be the employer's "fault," only that the reason was caused by the employment. In this case, the claimant had good cause for quitting his employment attributable to the employment.

DECISION:

The unemployment insurance decision dated April 27, 2006, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs