

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL B WHITTERS
Claimant

APPEAL NO. 10A-UI-01662-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHITTERS LANDSCAPING INC
Employer

OC: 12/27/09
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Michael Whitters (claimant) appealed a representative's January 20, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Whitters Landscaping (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 12, 2010. The claimant participated personally. The employer provided a telephone number for Jerri Whitters but she could not be reached at the time of the hearing. The administrative law judge left a telephone message. The employer did not return the call before the hearing ended.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 2009, as a full-time laborer. The claimant quit work to go to school. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work 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 24.25(26) 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:

(26) The claimant left to go to school.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intent to leave employment was evidenced by his words and actions. He told the employer that he was leaving to go to school and stopped working. When a claimant quits work to return to school, the leaving is without good cause attributable to the employer. The claimant quit work to go to school. His leaving is without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's January 20, 2010 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs