

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

JOHN P MCMULIN II
360 E AURORA AVE
DES MOINES IA 50313

MENARD INC
3319 – 5TH AVE S
FT DODGE IA 50501

MENARD INC
ATTN JAMES MCMENOMY
4777 MENARD DR
EAU CLAIRE WI 54703-9625

Appeal Number: 04A-UI-01806-CT
OC: 01/11/04 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 Quit

STATEMENT OF THE CASE:

John McMulin filed an appeal from a representative's decision dated February 9, 2004, reference 02, which denied benefits based on his separation from Menard, Inc. After due notice was issued, a hearing was held by telephone on March 10, 2004. Mr. McMulin participated personally and Exhibit A was admitted on his behalf. The employer participated by James Teichmeier, Assistant General Manager, and was represented by James McMenomy, Attorney at Law. Exhibits One and Two were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. McMulin began working for Menard, Inc. on March 1, 2000 and last performed services on November 21, 2003. He was last employed in the lumber yard and worked from 35 to 40 hours each week. On November 24, 2003, he spoke to James Teichmeier to request a transfer to a Des Moines location because he had moved from Fort Dodge over the previous weekend. Mr. McMulin was told that a transfer could take two weeks and would be dependent on the availability of positions in the Des Moines area. He was also told that the process had to be conducted through the corporate office. Mr. McMulin was also told that he would have to finish out his work schedule in the Fort Dodge store.

Mr. McMulin did not want to work out his remaining schedule in the Fort Dodge store because of the commute from Des Moines to Fort Dodge. On November 24, he sent a letter to the corporate office requesting a transfer. He reiterated his request for a transfer in a letter to the corporate office on December 20. As of the date of the hearing, he had not received any response to his request.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. McMulin was separated from employment for any disqualifying reason. He initiated the separation when he moved away from the Fort Dodge area and decided he did not want to commute to Fort Dodge to continue working for Menard, Inc. at that location. He was told that his transfer request would take approximately two weeks but that he had to complete his schedule at Fort Dodge. He did not complete his schedule in Fort Dodge. Because Mr. McMulin initiated the separation, it is considered a quit. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code Section 96.5(1). Mr. McMulin had the burden of proving that his quit was for good cause attributable to the employer. Iowa Code Section 96.6(2).

Mr. McMulin left his employment because he moved from the area where he was working. He had not been promised a transfer to a store in Des Moines. Therefore, he did not move in good-faith reliance on any representations made to him by the employer. The employer was not under any obligation to give him the requested transfer. An individual who leaves employment because he moved to a different locality is presumed to have quit for no good cause attributable to the employer. See 871 IAC 24.25(2). The same is true where an individual leaves employment because of serious family needs or responsibilities. See 871 IAC 24.25(23). After considering all of the evidence, the administrative law judge concludes that Mr. McMulin's reasons for leaving the employment were not attributable to the employer. Therefore, benefits are denied.

DECISION:

The representative's decision dated February 9, 2004, reference 02, is hereby affirmed. Mr. McMulin quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/b