

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

MARK A YETZ
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DEWITT IA 52742

DENNIS VANDER HEIDEN
VANDER HEIDEN TRUCKING
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Appeal Number: 04A-UI-05007-LT
OC 04-04-04 R 04
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 Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the April 26, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 25, 2004. Claimant did participate. Employer did participate through Brenda Kay and was represented by Jason Butz, Attorney at Law.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time local driver through December 5, 2004 when he quit. Junior Peterson swore at claimant and told him if he didn't have the truck over there "it would be his ass." Dennis Vander Heiden, owner was swearing and calling claimant names on about

December 2. Employer was angry because claimant had a non-employee passenger in the company truck without permission. Claimant also used obscenities while at work and in the presence of Brenda Kay. The swearing and name-calling happened once before shortly after he was hired but claimant overlooked it once.

Claimant was also upset because employer had agreed to allow claimant to help shovel snow for his disabled father and some neighbors if work was slow in the winter. Work did not slow down as usual during the winter and employer wanted claimant to take a load when claimant wanted to plow snow instead.

The claimant did not notify the employer of his concerns or his intention to quit prior to leaving.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left 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.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

Claimant can hardly expect civilized language from his employer if he does not use it himself. Furthermore, claimant acknowledged that the permission to plow snow was upon the condition that work was slow. It was not and employer had the right to assign work according to its needs. Inasmuch as the claimant did not give the employer an opportunity to resolve his complaints prior to leaving employment, the separation was without good cause attributable to the employer. Benefits are denied.

DECISION:

The April 26, 2004, reference 01, decision is affirmed. The claimant voluntarily left his employment without 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 benefit amount, provided he is otherwise eligible.

dml/kjf