

**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**

**ORLANDO W MCCLAIN  
1401 ILLINOIS AVE  
AMES IA 50014**

**HACK CO INC  
c/o ROSE FLASPOHLER  
100 DAUTON AVE  
AMES IA 50010**

**Appeal Number: 05A-UI-05845-HT  
OC: 05/15/05 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Orlando McClain, filed an appeal from a decision dated May 27, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 21, 2005. The claimant participated on his own behalf. The employer, Hack Company, Inc. (Hack), participated by Human Resources Manager Rose Flaspohler and Area Manager Sara Dvorak. Exhibit 1 was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Orlando McClain was employed by Hack from

March 1, 2004, until May 13, 2005. He was a full-time chemical bottler, a position he had assumed in November 2004.

The claimant at first expressed his concerns to Human Resources Manager Rose Flaspohler about the hazards of working with chemicals. He was given additional training in the handling of these materials and also the safety equipment provided by the employer which he should use to minimize any risks.

In 2005 there were a number of other job openings posted throughout the plant but Mr. McClain did not apply for any of them. Finally he submitted a written resignation on May 13, 2005, stating he was quitting to "pursue other opportunities." At the exit interview he stated it was his concerns about the chemicals which had prompted him to leave.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

The claimant quit because of his concerns over the work environment and working with chemicals. However, there is nothing in the record to establish the chemicals presented any substantial risk of harm if the proper safety procedures were followed. In addition, he did not take the opportunity to bid on any jobs which would take him out of the chemical area. Also, he never notified the employer he would quit unless it addressed his concerns as required by Swanson v. EAB, 554 N.W.2d 294 (Iowa App. 1996). The record establishes the claimant did not have good cause attributable to the employer for quitting and he is disqualified.

#### DECISION:

The representative's decision of May 27, 2005, reference 01, is affirmed. Orlando McClain is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw