

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

VIRGIL A AUDUS
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TOBA OF IOWA LLC
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Appeal Number: 04A-UI-01582-DT
OC: 01/11/04 R: 01
Claimant: Appellant (2)

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:

Virgil A. Audus (claimant) appealed a representative's February 10, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Toba of Iowa doing business as P A Brannger Food Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2004. The claimant participated in the hearing and was represented by Richard Sturgeon, personal representative. Don Byers appeared on the employer's behalf. One other witness, Dave Wuitschick, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer's predecessor on February 9, 1999. He worked part-time (approximately 32 hours per week) as a clean up person in the employer's food service business. His last day of work was January 7, 2004.

When the claimant accepted the position, his schedule was to work starting at approximately 6:00 p.m. to 6:30 p.m. until done, approximately six to seven hours. This remained the claimant's schedule after the employer acquired the business in approximately 2001. In August 2003, Mr. Byers, the production manager, approached the claimant and indicated there were safety issues regarding the claimant being alone in the facility after everyone else had left, and that he needed the claimant to report to work earlier, at least by 5:00 p.m. The claimant indicated he would try, but determined that it interfered too much with two other self-employment arrangements that he had during the day. He then submitted his two-week notice to be effective August 21. However, the employer was unable to find a suitable replacement, and the claimant stayed on, continuing to report to work usually between 6:00 p.m. and 6:30 p.m.

On January 5, 2004, Mr. Byers again approached the claimant and again indicated that it was necessary that the claimant report for work by 5:00 p.m. The claimant again indicated that it was a problem but he would do his best. On January 7, again Mr. Byers insisted that the claimant must report for work by 5:00 p.m. and again the claimant indicated it was a problem with his other work. On January 8 the claimant turned in his keys and indicated that he had to quit, that he was not able to report to work by 5:00 p.m. due to his other work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit for 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.

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing, or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). The change in the claimant’s start time that was to have been implemented was a substantial change in the claimant’s contract of hire in the context of the claimant’s situation. Dehmel, supra. Benefits are allowed.

DECISION:

The representative’s February 10, 2004 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/kjf