

**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**

**Appeal Number: 05A-UI-01023-JTT
OC: 12/26/04 R: 01
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.

**STEVE B MOUSER
PO BOX 72
MARCUS IA 51035**

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.

**SCHUSTER GRAIN CO INC
PO BOX 1110
LE MARS IA 51031**

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Steve Mouser filed a timely appeal from the January 21, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 15, 2005. Mr. Mouser participated. Schuster Grain participated through Leon Hill, Corporate Director of Safety. With the consent of the parties, the administrative law judge has taken judicial notice of Plymouth County case number OWCR011482 and Dickinson County case number OWCR015364.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Mouser was employed as a full-time over-the-road truck driver from November 12, 2003 until August 7, 2004, when he voluntarily quit the employment. On August 2, 2004, Mr. Mouser

asked his director supervisor, Scott Martin, for a few days off to take care of personal business. At the time of the request, Mr. Mouser advised Mr. Martin that he would return to work on August 4 or 5. Mr. Mouser did not return to work at the appointed time. On August 7, Mr. Mouser returned to the employer and spoke with Ed Jaros, General Manager. Mr. Mouser returned his "fuel cards" and advised Mr. Jaros that he was quitting as a result of being arrested for operating while intoxicated and the anticipated loss of his privilege to operate a motor vehicle. There was no other reason for the quit.

Mr. Mouser is charged with one count of Operating While Intoxicated in Plymouth County case number OWCR011482 and Dickinson County case number OWCR015364. As a result of the most recent arrest, Mr. Mouser's privilege to operate a motor vehicle was revoked. Both cases are still pending.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether Mr. Mouser's quit was 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.

Since Mr. Mouser quit the employer, he has the burden of proving that the quit was for good cause attributable to the employer. Iowa Code section 96.6(2). When a claimant gives the employer notice of an intention to resign and the employer accepts the resignation, the claimant's voluntary quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(37).

The facts in this matter were undisputed by the parties. Mr. Mouser's sole reason for quitting his employment was the loss of his privilege to operate a motor vehicle as a result of being arrested and charged with Operating While Intoxicated. Mr. Mouser advised the employer of the intention to quit and the employer accepted the resignation. The evidence in the record, as set forth in the findings of fact, establishes that Mr. Mouser's voluntary quit was not for good cause attributable to the employer. Under the applicable Iowa statute and Workforce Development rule, Mr. Mouser is not eligible for benefits. Accordingly, a disqualification will enter.

DECISION:

The January 21, 2005, 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 Mr. Mouser has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

jt/tjc