

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

SHAIN L ZIGLER
161 KOHAWK ST SW
CEDAR RAPIDS IA 52404

A T C INC
941 66TH AVE SW
CEDAR RAPIDS IA 52404

Appeal Number: 04A-UI-00634-DWT
OC 12/07/03 R 03
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 are 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:

Shain L. Zigler (claimant) appealed a representative's January 8, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of A T C, Inc. (employer) would not be charged because the claimant had voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2004. The claimant participated in the hearing. Marilyn Phillip, the secretary, appeared on the employer's behalf. 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 his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in May 2001. During his employment, there were about five or six times the claimant talked to either Todd or Mary Philip about the employer failing to pay him for all the hours he worked. When the claimant talked to the employer, the employer acknowledged a mistake had been made and adjusted the claimant's paycheck.

On September 29, 2003, the claimant received his paycheck along with a note indicating the employer was not going to pay him for two of the two and a half hours he was away from work for a random drug test and that three of the hours he had submitted for work on a Volvo would not be paid. The claimant decided he was tired of going to the employer to get his paycheck correct and quit.

The employer decided to withhold two hours of pay because the employer wanted to know why it took the claimant so long to get a drug test. If the claimant had explained the reason why he was away from work more than two hours, the employer would have paid him. Prior to September 29, 2003, the claimant did not indicate he would quit if he again had problems with being paid the correct amount of money.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant voluntarily quit his employment on September 29, 2003. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.5-1.

The law presumes a claimant has good cause to quit when he quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The claimant was frustrated when he learned the employer had not paid him for all the time he was away from work for a random drug test the employer required him to take. The employer's failure to warn the claimant before he received his paycheck that the amount of time he had been away from work for the drug test was questionable and he would not be paid for the time until he gave the employer an explanation as to what happened amounts to poor judgment. This incident does not amount to a substantial change in the employment contract.

The claimant initially indicated he did not expect the employer to pay him for anytime he worked on a Volvo. When the claimant discovered problems with the Volvo had not been the result of anything the claimant had done, the employer agreed to pay the claimant for the time he worked on the Volvo. In the past when the claimant brought it to the employer's attention that he had been "shortchanged" the actual number of hours he worked, the employer corrected the problem and paid the claimant for all the time he worked. Even though the claimant may have been frustrated because he again had to talk to the employer to get paid for all the time he worked, there is no evidence the employer would not have paid him if the claimant had again notified the employer about the discrepancy. The claimant quit for compelling reasons, but those reasons do not qualify him to receive unemployment insurance benefits. As of December 7, 2003, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 8, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for personal reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 7, 2003. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjf