

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MICHAEL D KIMBALL
Claimant

APPEAL NO. 14A-UI-04529-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELS OF FLORIDA INC
Employer

OC: 03/23/14
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Michael Kimball filed a timely appeal from the April 23, 2014, reference 01, decision that disqualified him for benefits based on an agency conclusion that he had voluntarily quit without good cause attributable to the employer on January 28, 2014 due to a lack of transportation. After due notice was issued, a hearing was held on May 20, 2014. Mr. Kimball participated. Tracy Hart represented the employer.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: ELS of Florida, Inc., doing business as Labor Finders, is a temporary employment agency. Beginning in July 2013, Michael Kimball performed a series of 38 day-labor assignments for the employer, mostly at General Mills in Cedar Rapids. Mr. Kimball last performed work for the employer in a day-labor assignment at General Mills on January 28, 2014. Mr. Kimball subsequently accepted another day-labor assignment for January 29, 2014, but then notified the employer that he could not appear for the assignment due to a lack of transportation. Mr. Kimball did not return to work for the employer.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.25(1) 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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Mr. Kimball voluntarily quit the employment due to a lack of transportation. The quit was effective January 29, 2014. Workforce Development records indicate that without the wages from Labor Finders, Mr. Kimball lacks sufficient wages to be eligible for benefits. Mr. Kimball is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The Agency representative's April 23, 2014, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer effective January 29, 2014. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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