

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TSEGAZAB Y WALDAYOWHANS
Claimant

APPEAL NO. 13A-UI-02667-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

**OC: 02/23/13
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 28, 2013, reference 02, which denied unemployment insurance benefits finding that the claimant voluntarily quit work on January 3, 2013 due to loss of transportation. After due notice was provided, a telephone hearing was held on April 2, 2013. The claimant participated. The employer participated by Mr. Sam Krauss, Hearing Representative and witness, Mr. Jacob Swift, Group Leader. Employer's Exhibits One, Two and Three were received into evidence.

ISSUE:

The issue in this matter is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Mr. Waldayowhans was employed by The Hon Company from October 2, 2006 until January 3, 2013 when he voluntarily left his job in anticipation that he would be discharged. The claimant was employed as a full-time machine operator and was paid by the hour. His immediate supervisor was Jacob Swift. The claimant's last day on the job was December 21, 2012. The claimant was expected to return to work on January 2, 2013 but failed to report or to notify his employer of his impending absence.

The claimant's immediate supervisor contacted the claimant at 7:00 a.m. that morning and instructed him to report to work as soon as possible. The claimant was unwilling to do so stating that his car was broken and that he believed that he would be discharged from employment. Although given the opportunity to report and explain the reason for his absence, the claimant declined to do so and quit employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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(1) and (28) provide:

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.

(28) The claimant left after being reprimanded.

The claimant has the burden of proving that the voluntary leaving was for good attributable to the employer. Iowa Code section 96.6-2.

In this matter the evidence establishes that the claimant chose to leave his employment in anticipation that he might be discharged for failing to report to work following a holiday. Company policy did not allow two "free pass" days to be used after holidays and the claimant had not reported following the New Year's Day holiday. Although the employer was willing to listen to the claimant's reasons for his failure to report and a decision had not been made to discharge the claimant, the claimant nonetheless was unwilling to report to work citing transportation issues and his anticipation that he might be discharged. The claimant's reasons for leaving were not attributable to the employer. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated February 28, 2013, reference 02, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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