

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD S DURRELL
Claimant

APPEAL NO. 13A-UI-02502-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

JORSON & CARLSON COMPANY
Employer

OC: 01/27/13
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Richard Durrell (claimant) appealed a representative's February 22, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Jorson & Carlson Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for May 10, 2013, in Des Moines, Iowa. The claimant participated personally. The employer participated by Kevin Hahn, Division Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 4, 2011, as a part-time route sales/delivery person. At the time of hire the owner told the claimant that the owner would evaluate the claimant at six months and twelve months and decide whether to hire the claimant as a full-time employee. At six months and twelve months the owner decided to keep the claimant on as a part-time employee because sales had not increased. The claimant thought there would have been a more formal review process or a discussion between the employer and the claimant but there was neither. On July 16, 2012, the claimant called the division manager and said he was quitting to work as a contract worker for a company that was sending him to training the following day. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without 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 24.25(19) 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:

(19) The claimant left to enter self-employment.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. When an employee quits work because he becomes self-employed, his leaving is without good cause attributable to the employer. The claimant left work to become self-employed. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's February 22, 2013 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css