

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

GARY P WORDEHOFF
12333 KOBER RD
LA PORTE CITY IA 50651

CORKERY INC
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-06629-DT
OC: 05/02/04 R: 03
Claimant: Appellant (2)

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 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Gary P. Wordehoff (claimant) appealed a representative's June 7, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Corkery, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 13, 2004. This appeal was consolidated for hearing with one related appeal, 04A-UI-16630-DT. The claimant participated in the hearing and presented testimony from one other witness, Larry Corkery. Beth Crocker of Employer's Unity 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 for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on December 8, 1997. He worked full time as a maintenance supervisor in the employer's Waterloo, Iowa recycling facility. His last day of work was April 29, 2004.

The business, previously owned by Mr. Corkery, had been sold about four years prior to April 29 to a new owner. The claimant continued in his position and Mr. Corkery continued to work as his general manager. In April 2004, the new owner began to more fully take over operation of the facility. There were a series of discussions with the claimant beginning approximately mid-April involving one or the other of Mr. Corkery or Mr. Benham, the then-overseer of the new owner's assumption of the business operation. The claimant was informed that the management of the operation would be modified to in essence eliminate the majority of the functions that he did, which had in the past been primarily administrative, and that he would be returned to work on the floor supervising one other laborer. He was also advised that rather than the 40 hour week that he had routinely worked, he would be expected to put in 50 or more hours per week for the indefinite future, prospectively up to a year or more, with no change in compensation.

These changes were to go into effect on or about April 30. On April 29 Mr. Corkery met with the claimant a final time and explained that he had to choose whether to report for work and bring his work tools and begin his new duties, or decide to quit. The claimant turned in his keys and phone and stated he was done.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit 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.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

“Good cause attributable to the employer” does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). There is some question as to whether Mr. Corkery accurately informed the claimant as to the actual changes that were to occur in this position; however, Mr. Corkery at that time had the actual and apparent authority to speak on behalf of the employer, and the information provided by Mr. Corkery to the claimant is binding on the employer as to the claimant’s reliance on that information. The change in the claimant’s duties and hours that were to have been implemented was a substantial change in the claimant’s contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative’s June 7, 2004 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/kjf