

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

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MILLARD REFRIGERATED SERVICES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-05014-LT
OC: 04-17-05 R: 04
Claimant: Respondent (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 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)

Iowa Code §96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

Employer filed a timely appeal from the May 4, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 1, 2005. Claimant did participate. Employer did participate through Todd Rogers, general manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time reach operator through March 11, 2005 when he quit. One person showed up drunk to work and two others regularly went to a bar at lunch and returned to work intoxicated. Mike, night supervisor, hit the rack with his forklift. Julie also went drinking with others at lunch. Ryan, a supervisor, ran into a cherry pick operator and a cooler after lunch when he returned after lunch walking funny and slurring his words. Claimant told Todd Rogers,

general manager, about his concerns a couple of months prior to the separation. He said things would get better but they did not after numerous additional complaints, the last being the week before he quit. Claimant was also concerned about a lack of forklift training as coworker Tim drove a forklift into the one claimant was driving. The forklift training was poor to non-existent as a new employee was sent into a corner and was not given any training films. Other forklift operators were not properly trained to the extent that they were hitting each other's forklifts and it seemed like bumper tag. Employer also failed to notify claimant about a safety meeting and after he missed it, employer made him sign a paper showing he attended even though he had the day off.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with 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(2), (4) provide:

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:

- (2) The claimant left due to unsafe working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

Claimant met the requirements of Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993), as he repeatedly reported his concerns to the general manager without result. Claimant was reasonably in fear for his safety while working around untrained forklift operators and coworkers and one supervisor who would consume alcohol at lunch and return to continue working. The separation was with good cause attributable to the employer and benefits are allowed.

DECISION:

The May 4, 2005, reference 01, decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

dml/tjc