

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

NICK C RITTER
112 N QUINBY
NORA SPRINGS IA 50458

NIELSON EXCAVATING INC
PO BOX 625
MASON CITY IA 50402-0625

Appeal Number: 04A-UI-09446-RT
OC: 02-29-04 R: 02
Claimant: Appellant (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)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Nick C. Ritter, filed a timely appeal from an unemployment insurance decision dated August 26, 2004, reference 04, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on September 23, 2004 with the claimant participating. Ron Nielson, Owner, and Wesley Loeckle participated in the hearing for the employer, Nielson Excavating, Inc. The administrative law judge attempted to call Tim Bray and Ray Blanchard to act as witnesses for the employer but was unable to reach them. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time laborer from April 22, 2002 until he voluntarily quit on August 6 or August 9, 2004. On either August 6 or August 9, 2004, the claimant called the employer's owner, Ron Nielson, and one of the employer's witnesses, after he had hurt a finger at the work site and while walking back to the shop. At the time the claimant said he was quitting. Mr. Nielson went out and picked the claimant up in his truck because the claimant had no transportation and again the claimant told him he was quitting but the claimant refused any medical attention offered by Mr. Nielson. The claimant testified that he quit because of difficulties with the employer's lead man at the work site, Victor Hewett. Mr. Hewett was the lead man and occasionally reprimanded or scolded the claimant about things the claimant was doing wrong. The claimant took offense at this and quit. The claimant informed Wesley Loeckle, the employee of another employer who worked at the job site, that he was considering quitting but would not really state why. The claimant did express some concerns about Mr. Hewett to Mr. Nielson who then talked to Mr. Hewett and Mr. Hewett agreed to watch his conduct toward the claimant. Mr. Hewett was familiar with the job and was a perfectionist and wanted the job done appropriately and would reprimand the claimant. The claimant had quit several times previously without giving reasons but had always returned to the employer.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 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.

871 IAC 24.25(6), (21), (22), (28) provide:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

The parties concede that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant testified that he left his employment because of the treatment by the lead man, Victor Hewett. The claimant testified that Mr. Hewett was always yelling and swearing at him, calling him names. Finally, an incident occurred on either August 6 or August 9, 2004, in which the claimant's fingers were pinched and as he was walking away from the job site, he called the employer and quit. The claimant's testimony here is not credible. Ron Nielson, Owner, testified credibly that he never observed or heard Mr. Hewett yelling or swearing at the claimant. A disinterested witness for the employer, Wesley Loeckle, an employee of another employer who was at the job site, credibly testified that he was around the claimant and Mr. Hewett frequently and he never observed or heard any such profanity from Mr. Hewett to the claimant. Mr. Loeckle did testify that the claimant complained to him that Mr. Hewett had "scolded" the claimant about things the claimant had done wrong. Mr. Hewett was experienced and a perfectionist and did reprimand the claimant when he did something wrong. However, leaving work voluntarily because of a reprimand is not good cause attributable to the employer. There is also evidence that the claimant was unable to work with Mr. Hewett but leaving work voluntarily as a result of an inability to work with other employees or as a result of a personality conflict with the supervisor is not good cause attributable to the employer. There is also evidence that the claimant was dissatisfied with his work environment but again this is not good cause attributable to the employer. Despite the claimant's testimony which the administrative law judge concludes is not as credible as the testimony of the employer's witnesses, the administrative law judge is constrained to conclude that there is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. The claimant did hurt his fingers either on August 6 or August 9, 2004 but this was not a reason for the claimant's quit and also does not appear to have been a serious injury to his fingers. Finally, the claimant did express concerns to the employer and the employer addressed those concerns by talking to Mr. Hewett. The claimant did threaten to quit but he had actually quit several times and always came back to work. Because of the claimant's repeated quits and threats to quit, the administrative law judge concludes that, here, the claimant really did not give the employer a reasonable opportunity to address his concerns prior to his quit. It appears to the administrative law judge that the claimant was "crying wolf" too often. The administrative law judge notes that the claimant had five quits from different employers in 2003 and 2004. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of August 26, 2004, reference 04, is affirmed. The claimant, Nick C. Ritter, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

tjc/b