

**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**

**TROY STARKS
1211 N BARKCLAY ST
WATERLOO IA 50703**

**LUTHERAN SERVICES IN IOWA INC
ATTN-HUMAN RESOURCES
3116 UNIVERSITY AVE
DES MOINES IA 50311**

**Appeal Number: 05A-UI-01788-JTT
OC: 01/16/05 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 Quit
871 IAC 24.26(21) – Compelled to Quit or Be Discharged

STATEMENT OF THE CASE:

Troy Starks filed a timely appeal from the February 15, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 8, 2005. Mr. Starks participated in the hearing. Lutheran Services participated through Martha Swanson, Employee Relations Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Troy Starks was employed by Lutheran Services as a full-time Youth Associate at the Waverly campus from May 2003 until January 13, 2005, when he resigned in lieu of being discharged.

On January 12, 2005, Mr. Starks met with Program Supervisor Richard Clark. At that meeting, the gentlemen discussed concerns the employer had about Mr. Starks' conduct at work beginning in Fall 2004 and leading up to an incident on December 30, 2004. The most recent incident involved an allegation that Mr. Starks had left his duties, which involved supervising children in a cottage environment, and gone to Wal-Mart. At the time of the meeting on January 12, 2005, the employer had decided to discharge Mr. Starks. Mr. Clark conveyed this to Mr. Starks, but provided Mr. Starks with the opportunity to resign instead. Mr. Starks then tendered his written resignation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Starks' quit was for good cause attributable to the employer. It does.

An individual is disqualified from receiving unemployment insurance benefits if the individual has left work voluntarily without good cause attributable to the employer. See Iowa Code section 96.5(1). Because the claimant quit the employment, the claimant has the burden in this matter of proving that his quit was with good cause attributable to the employer. See Iowa Code section 96.6(2). Where a claimant was compelled to resign when given the choice of resigning or being discharged, the separation is not a voluntary leaving, and the quit is considered to be for good cause attributable to the employer. See 871 IAC 24.26(21). On January 12, 2005, Mr. Starks was given the opportunity to resign or be discharged. Based on the evidence in the record, set forth in the Findings of Fact, and application of the appropriate law, the administrative law judge concludes that Mr. Starks' quit was for good cause attributable to the employer. Accordingly, no disqualification will enter.

DECISION:

The Agency representative's February 15, 2005, reference 01, decision is reversed. The claimant left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

jt/pjs