

**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**

**JOHNNY P MONTAGNA  
3311 STEAMBOAT WAY APT 7  
MUSCATINE IA 52761**

**TEAM STAFFING SOLUTIONS INC  
116 HARRISON ST  
MUSCATINE IA 52761**

**Appeal Number: 05A-UI-00128-MT  
OC: 12/05/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

**Section 96.5-1 – Voluntary Quit**

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated December 23, 2004, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 24, 2005. Claimant participated with witness Robert McIntosh. Employer participated by Megan Randall, Account Manager, and Mick Black, Human Resource Manager. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 30, 2004. Claimant went through training and was offered first shift at West Branch. Claimant was told that he would be able to keep his West Branch job once started. A supervisor at the work site made the promise. Several months later, claimant was told to transfer to Iowa City or a second shift position or he would not have a job. Claimant did not want to drive the extra distance to Iowa City and did not want to work the second shift.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant quit for good cause attributable to employer. The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he did not want to change locations and shifts worked. Claimant was promised that he could keep his West Branch job by a company representative. Claimant then worked the job for about two months. Employer then unilaterally changed the contract of hire. Claimant's in person testimony concerning the promise of the West Branch job by a company representative is more credible than employer's hearsay. As such this is a breach in the contract of hire perpetrated by employer and good cause for a quit. Benefits allowed.

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 24.23(25) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

DECISION:

The decision of the representative dated December 23, 2004, reference 01, is affirmed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

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