

**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**

**BRIAN K RAMSEY
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**WEST SIDE TRANSPORT INC
4201 – 16TH AVE SW
PO BOX 9129
CEDAR RAPIDS IA 52409-9129**

**Appeal Number: 04A-UI-00142-RT
OC: 11/30/03 R: 12
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
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Brian K. Ramsey, filed a timely appeal from an unemployment insurance decision dated December 24, 2003, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on January 27, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Judy Hannen, Director of Human Resources, participated in the hearing for the employer, West Side Transport, Inc. 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 over-the-road truck driver from September 11, 2002 until he voluntarily quit on November 15, 2003. The claimant was also previously employed with the employer from October 9, 2001 to March 5, 2002. On November 15, 2003, the claimant called and spoke to his dispatcher and told the dispatcher that he was spending too much time away from his family and was moving out of state and had to quit. The claimant never expressed any concerns to the employer about his working conditions nor did he ever indicate or announce an intention to quit if any of his concerns were not addressed by the employer. If the claimant had not quit, work would have been available and remaining for him. The claimant has never returned to the employer and offered to go back to work for the employer. The employer's witness, Judy Hannen, Director of Human Resources, had no knowledge about the claimant's ability or availability for work nor did she have any information about whether the claimant was earnestly and actively seeking work.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from the employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was not able and available for work. The claimant is ineligible to receive unemployment insurance benefits.

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(2), (13) provides:

(2) The claimant moved to a different locality.

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

The administrative law judge concludes that the claimant left his employment voluntarily. The employer's witness, Judy Hannen, Director of Human Resources, so credibly testified. At fact-finding, the claimant also admitted that he quit. 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 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 did not participate in the hearing and provide evidence of reasons attributable to the employer for his quit. Ms. Hannen credibly testified that the claimant informed his dispatcher when he was quitting that he was spending too much time away from his family and was moving out of state. The administrative law judge considers time away from family similar to wages. It is not good cause attributable to the employer to quit because of wages or because time away from family if the claimant was aware of his wages or as here was aware of the time he would be spending away from his family. Further, it is not good cause attributable to the employer to quit his employment because he was moving out of state. At fact finding, the claimant stated that he quit to move to Alabama because his mother was ill and he wanted to be closer to home. There is no evidence, however, that the claimant actually did move out of state because his mother was ill, nor is there any evidence that his mother has sufficiently recovered and the claimant has immediately returned and offered to perform services for the employer. In fact, the evidence establishes that the claimant has never returned to the employer and offered to go back to work. See Iowa Code Section 96.5(1c). There is not a preponderance of the evidence that claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. There is no evidence that the claimant ever expressed any concerns to the employer about his working conditions or indicated or announced an intention to quit if any of his concerns were not addressed by the employer. Accordingly, 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.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to

accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). 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 is and was at all material times hereto, able, available, and earnestly and actively seeking work or is otherwise excused. The claimant did not participate in the hearing and provide evidence that he was able, available, and earnestly and actively seeking work or in the alternative, that he was temporarily unemployed or partially unemployed so as to be excused from such provisions. The evidence does indicate that the claimant left his employment to return to Alabama to take care of his mother. There is a question as to whether the claimant would be able, available, and earnestly and actively seeking work under these circumstances. Accordingly, the administrative law judge concludes that the claimant is not able, available, and earnestly and actively seeking work nor is he excused from such provisions and, as a consequence, he is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he demonstrates that he is qualified for such benefits and is able, available, and earnestly and actively seeking work.

DECISION:

The representative's decision of December 24, 2003, reference 01, is affirmed. The claimant, Brian K. Ramsey, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits and demonstrates that he is able, available, and earnestly and actively seeking work.

kjf/b