

**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**

**THOMAS B HUTZELL
1125 PRAIRIE ST
ADEL IA 50003-1720**

**NATIONAL BY-PRODUCTS LLC
PO BOX 615
DES MOINES IA 50303-0615**

**Appeal Number: 06A-UI-06005-MT
OC: 05/07/06 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 Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 30, 2006, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 27, 2006. Claimant participated with witness Sue Hutzell. Employer participated by Max Coleman, Plant Manger and Michael Ford, Sales 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 May 10, 2006. Claimant and employer agreed on September 19, 2005 that claimant's last day of work would be May 11, 2006. There was also a negotiation over a no compete contract. The resignation was not connected to the

no compete contract. Claimant told other workers after September 19, 2005 that his last day would be May 11, 2006. Claimant also made notations on the May 2006 calendar that his last day of work would be May 11, 2006. Employer accepted the resignation. Claimant, on April 25, 2006, asked to work until July. Employer refused to approve the extension of work. Claimant was escorted from the property on May 11, 2006.

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 failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of a desire to engage in self-employment. Claimant did not link the resignation to the no compete. Claimant made statements and wrote notes on the calendar indicating that he was going through with the resignation effective May 11, 2006. The objective manifestations of claimant indicated that he had in fact resigned. Employer relied on the statements of claimant. Also of note is claimant's request for an extension to July for a resignation. The request for an extension would not have been necessary if claimant had not tendered his resignation. The evidence indicates that claimant quit to pursue self-employment. Claimant's complaints about harassment had been resolved in February of 2006. At the time of separation there was no ongoing harassment. This is a quit for personal reasons. Benefits are withheld.

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(19) 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:

- (19) The claimant left to enter self-employment.

DECISION:

The decision of the representative dated May 30, 2006, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

mdm\cs