

**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**

**MATTHEW R WILKER
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**RICKY L NESVIK
D/B/A RICK'S CONSTRUCTION
1647 140TH ST
OSSIAN IA 52161**

**Appeal Number: 06A-UI-00119-RT
OC: 12-19-04 R: 04
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, Matthew R. Wilker, filed a timely appeal from an unemployment insurance decision dated December 27, 2005, reference 06, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on January 19, 2006, with the claimant participating. Ricky L. Nesvik, doing business as Rick's Construction, participated on his own behalf. 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 late May of 2004 until he voluntarily quit on November 22, 2005. On November 22, 2005, the claimant walked off the job without telling anyone he was quitting and thereafter never returned to the employer. The claimant walked off the job because the owner, Ricky L. Nesvik, the employer's witness, told the claimant he wanted the job done right. In addition, the claimant had started to do something that Mr. Nesvik did not want him to do. Mr. Nesvik told the claimant to do something else and the claimant did not want to do it. The claimant got angry and walked off the job. The claimant denied that it had anything to do with his pay. The claimant also testified that he quit because he felt discriminated against as opposed to a co-worker because the co-worker would get more work than the claimant did. However, the claimant was absent a number of occasions because of personal problems and illness. At no time did the claimant ever express any concerns to the employer about any of these matters.

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(13)(21)(22) & (27) provide:

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:

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

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

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

(27) The claimant left rather than perform the assigned work as instructed.

The parties agree, and the administrative law judge concludes, that the claimant left his employment voluntarily on November 22, 2005, when the claimant simply walked off the job and never returned to the employer thereafter. 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 the owner and his boss, Ricky L. Nesvik, the employer's witness, yelled at him that he wanted the job done right. The claimant then testified that he (the claimant) "blew up" and walked off the job. There was also evidence that the claimant was preparing to do some work that Mr. Nesvik did not want him to do. When Mr. Nesvik told the claimant that the claimant should not be doing that and that he, Mr. Nesvik, would do it, the claimant got angry and walked off the job. At fact-finding the claimant testified that he walked off the job because he felt the job did not pay enough but he was paid what the employer told him he would get at the time of his hire. The claimant now denies this. In any event, leaving work voluntarily because of a dissatisfaction with wages when the claimant knew the rate of pay when hired or because of a dissatisfaction with the work environment or because of a personality conflict with his supervisor, or leaving rather than perform the assigned work as instructed, are all not good cause attributable to the employer. The claimant testified that he left work also because he felt discriminated against as opposed to a co-worker because the co-worker got more work than he did. The administrative law judge concludes that without more this is not discrimination. Further, Mr. Nesvik credibly testified, and his testimony was confirmed by the claimant, that Mr. Nesvik missed a lot of work. It would be natural to choose a co-worker who would work more frequently to do additional work. The administrative law judge concludes that there is not a preponderance of the evidence that any of the reasons given by the claimant for his quit made his working conditions unsafe, unlawful, intolerable or detrimental or subjected the claimant to a substantial change in his contract of hire. Rather, the claimant left his work voluntarily because he was instructed to do work that he did not want to do or to do it right and because he was dissatisfied with his working conditions but these are not good cause attributable to the employer for a voluntary quit. There is also no evidence that the claimant ever expressed any concerns to the employer about any of the reasons given by the claimant for his quit.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily on November 22, 2005, 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 December 27, 2005, reference 06, is affirmed. The claimant, Matthew R. Wilker, 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.

kkf/tjc