

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

MAHDI S YAGOUB-ADAM
1169 – 22ND ST APT 1
DES MOINES IA 50311

DEE ZEE INC
c/o ADP UCM
PO BOX 66744
ST LOUIS MO 63166-6744

Appeal Number: 06A-UI-05179-RT
OC: 07/31/05 R: 02
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 Quitting

STATEMENT OF THE CASE:

The claimant, Mahdi S. Yagoub-Adam, filed a timely appeal from an unemployment insurance decision dated May 5, 2006, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on May 31, 2006, with the claimant participating. The claimant was assisted by an interpreter, Lakhdar Rebahi. The employer, Dee Zee, Inc., did not participate in the hearing. Although the employer did call in a telephone number where a witness, Cindy Moyer, could purportedly be reached for the hearing, when the administrative law judge called that number at 2:11 p.m., he reached a voicemail for "Cindy." The administrative law judge left a message that he was going to proceed with the hearing and if Ms. Moyer or anyone else for the employer wanted to participate in the hearing they would need to call before the hearing was open and the record was closed. The hearing began when

the record was open at 2:22 p.m. and ended when the record was closed at 2:51 p.m. and no one from the employer had called during that time. 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 witness 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 employee from May 30, 2002, until he voluntarily quit effective January 17, 2006. On or about January 3, 2006, the claimant informed his supervisor and his manager that he would be quitting in two weeks, giving the employer a two-week notice. The claimant quit because although he was repeatedly promised by the employer that he would be allowed to operate a forklift or become a forklift driver, the claimant was never given that opportunity. The claimant passed one of the tests required to operate a forklift. However, the claimant was only allowed to operate a forklift for two days and then the claimant was replaced by another driver and the claimant was given other tasks. The claimant expressed concerns to the employer and the employer kept promising the claimant that he would be allowed to operate the forklift but he was never allowed to do so and eventually the claimant quit.

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 not.

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 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant credibly testified, and the administrative law judge concludes, that he left his employment voluntarily effective January 17, 2006. 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 met 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 credibly testified at the hearing that he left his employment because, although he was repeatedly promised that he would be allowed to operate a forklift or become a forklift driver that the employer never allowed the claimant to do so. The claimant credibly testified that he passed at least one of the tests required to operate a forklift and that he was allowed to operate a forklift for two days. However, the claimant credibly testified that after the two days the employer found another driver to drive the forklift and the claimant was assigned other duties. The claimant expressed repeated concerns to the employer and kept receiving promises that he would be allowed to operate a forklift but was never given the opportunity. In the absence of any evidence to the contrary, the administrative law judge concludes that the employer did promise the claimant that he could operate a forklift and the employer's failure to allow the claimant to operate a forklift as promised was a willful breach of the claimant's contract of hire which breach was substantial involving type of work. The claimant did express concerns to the employer but they were never addressed. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective January 17, 2006, with good cause attributable to the employer and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

DECISION:

The representative's decision of May 5, 2006, reference 01, is reversed. The claimant, Mahdi S. Yagoub-Adam, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he left his employment voluntarily with good cause attributable to the employer.

cs/pjs