

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

LEROY F NELSON  
3163 SHIRAS  
DUBUQUE IA 52001

JMTG INC  
A-OK YELLOW CAB  
1152 WHITE ST  
DUBUQUE IA 52001-5036

Appeal Number: 04A-UI-10860-DWT  
OC: 09/12/04 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, 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 are 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:

LeRoy F. Nelson (claimant) appealed a representative's September 27, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of JMTG, Inc., doing business as A-OK Yellow Cab (employer), would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 28, 2004. The claimant participated in the hearing. Mary Jo Pullen, an owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant had been driving a cab for the previous owner. When the employer took over the business on January 21, 2004, the claimant continued working for the employer. Pullen became his manager.

At various times, Pullen talked to the claimant about being responsible for getting his paperwork done and driving his cab in a responsible way. On September 10 after the claimant was done working, Pullen talked to the claimant about some problems. Pullen again told the claimant it was his responsibility to get his paperwork done accurately and in a timely manner. Pullen also expressed concerns that the employer was tired of making car repairs. The employer received reports that the claimant was not driving his cab responsibly. Pullen warned the claimant that he would be held responsible for transmission repairs. While Pullen did not tell the claimant he would have to pay the repair bill, the claimant concluded that this is what Pullen meant. The claimant did not believe it would be fair to require him or any other driver to pay repair bills for any of the employer's vehicles.

The claimant was scheduled to work the next day at 6:00 a.m. The claimant did not report to work because he was still upset that the employer would hold him responsible for future repair bills for the vehicle he drove. When the claimant did not report to work on Saturday or notify the employer that he would not be at work, Pullen called to ask why he had not reported to work as scheduled. The claimant repeated his concern that it was not fair for the employer to require him or any other driver to pay for vehicle repairs. When the claimant indicated he understood that Pullen had discharged him, Pullen told him she had never discharged him. Pullen also told the claimant that he should report to work the next day as scheduled and he would work the rest of his schedule as usual.

The claimant did not report to work on Sunday, September 12. Around 10:00 a.m., Pullen learned the claimant had again failed to report to work. Another employee was then contacted to work the claimant's Sunday schedule.

On Monday, September 13, the employer and claimant talked over the phone. When Pullen asked the claimant why he had not reported to work on Sunday, he told her because the employer was not being fair. The claimant did not indicate he had called the dispatcher on Sunday prior to his 6:00 a.m. start time. Since Pullen had already told the claimant he had not been discharged and gave him two chances to report to work, on Saturday and Sunday, she decided the claimant would not receive another opportunity to fail to report to work. Pullen told the claimant she considered his failure to report to work on Saturday and Sunday the equivalent of voluntarily quitting his job. Pullen asked the claimant to stop at the office on September 14 to sign a voluntarily resignation form. The claimant did not do this. Instead, the claimant established a claim for unemployment insurance benefits.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a.

The claimant's testimony that he talked to the dispatcher on September 12 before 6:00 a.m. is not credible. Since Pullen talked to the claimant on Saturday and told him to work as scheduled on Sunday, there was no reason for the claimant to call the dispatcher before his scheduled shift. Also, the claimant did not tell Pullen on Monday morning that he had not reported to work on Sunday because the dispatcher told him he was not on the schedule. Instead, the claimant told Pullen he had not reported to work because he still believed she was not treating him fairly. A preponderance of the evidence establishes the claimant voluntarily quit his employment by failing to report to work on Saturday and Sunday. Additionally, if the claimant did not intend to quit, it is troublesome that he did not call Pullen on Sunday to find out why he was not on the schedule since she had told him the day before to report to work. The claimant did nothing to retain his employment. His conduct establishes that he intended to quit. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant has voluntarily quit without good cause when he quits after being reprimanded. 871 IAC 24.25(28). The facts indicate the claimant did not like the employer holding him responsible for his paperwork and the way in which he drove the employer's vehicle. The claimant was upset after he concluded the employer would require him to pay for repairs to the cab he drove. While the employer indicated there would be consequences if an employee abused a vehicle, the employer had not decided what that consequence there would be as of September 10, 2004.

The claimant may have had compelling reasons for failing to return to work, but his reasons do not qualify him to receive unemployment insurance benefits. As of September 12, 2004, the claimant is not qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's September 27, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of September 12, 2004 decision. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/pjs