

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

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Appeal Number: 04A-UI-09360-BT
OC: 08/01/04 R: 04
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 Quit

STATEMENT OF THE CASE:

Michael Esser (claimant) appealed an unemployment insurance decision dated August 20, 2004, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with McLeod USA Telecommunications (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 22, 2004. The claimant participated in the hearing. The employer participated through Leah Gejria, Human Resources Representative.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer sales manager from January 5, 1998 through July 30, 2004. He quit his employment because of a change in the contract of hire. The company had a reduction of force in which hundreds of employees lost their jobs. Consequently, the employer had to move a lot of people around. Prior to July 13, 2004, the claimant's job previously involved sales only in Dubuque but after the force reduction, he was required to cover the entire east side of the state of Iowa. He was not given any additional compensation for these additional duties. The claimant did talk with his supervisor about the changes but there were no other options available.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant demonstrated his intent to quit and acted to carry it out when he gave notice of his resignation effective July 30, 2004 due to a change in the contract of hire. When a claimant voluntarily quits, he bears the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code section 96.6-2. The claimant's job duties previously involved sales in Dubuque, but he was subsequently required to cover the major cities on the eastern side of Iowa without any additional compensation. This is considered to be a substantial change in the claimant's contract of hire. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988).

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 law presumes a claimant has left employment with good cause when he quits because of a change in the contract of hire. 871 IAC 24.26(1). However, in order to show good cause for leaving employment based on a change in the contract of hire, an employee is required to take

the reasonable step of informing the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). In the case herein, the claimant did talk to his supervisor prior to resigning but since the company's recent reduction in force, nothing could be done about it. Consequently, the claimant's voluntary quit was with good cause attributable to the employer and benefits are allowed.

DECISION:

The unemployment insurance decision dated August 20, 2004, reference 01, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

sdb/pjs