

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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PELLA CORPORATION
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COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-07030-DT
OC: 03/13/06 R: 01
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 Leaving

STATEMENT OF THE CASE:

Patrick D. Ryan (claimant) appealed a representative's July 3, 2006 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Pella Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1, 2006. The claimant participated in the hearing. Rick Carter of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, John Smith and Jason Sunderman. 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 for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on May 15, 2006. He worked full time as a specialist/assembler in the employer's Shenandoah, Iowa facility on a work schedule of Monday through Thursday, 4:00 p.m. to 3:00 a.m., plus overtime. His last day of work was June 2, 2006.

The claimant had been having some difficulty with his hand from an injury at a prior employer. After June 2, he initially stayed home because of the problems with the hand. He saw a VA doctor on or about June 7. He called in to the employer on only one day, on or about June 7. He did not call in further as he assumed he would be discharged. On June 12, Mr. Smith, the human resources representative, came to the claimant's home to check on his status. The claimant indicated that he could get medical documentation to cover his absences to the employer by June 16, 2006. However, the claimant did not provide any paperwork and did not otherwise communicate with the employer after June 12. After June 12 he was further diagnosed with PTST and concluded that he would be missing a great deal more work. Also, his wife's grandfather in Kansas passed away and they were out of state for approximately a week dealing with family issues. He decided not to seek to return to his employment as he had already missed a great deal of time and believed he no longer had a job, and further that he needed to take some time to get his medical and personal matters resolved. He was never advised by a doctor that he should leave his employment for any medical condition.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code § 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 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2.

871 IAC 24.25(4), (20), (35) 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 § 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 § 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's July 3, 2006 decision (reference 04) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of June 2, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

ld/pjs