

**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**

**GARY HECK
1225 EMMONS ST
HIAWATHA IA 52233-1849**

**CEDAR RAPIDS COMMUNITY
SCHOOL DISTRICT
ATTN PAYROLL DEPT
346 – 2ND AVE SW
CEDAR RAPIDS IA 52404-2045**

**Appeal Number: 06A-UI-04189-RT
OC: 03-19-06 R: 03
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
Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Gary Heck, filed a timely appeal from an unemployment insurance decision dated April 5, 2006, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on May 3, 2006, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Tom Day, Manager of Custodial and Grounds Department, and Matt Dunbar, Associate Director of Human Resources, participated in the hearing for the employer, Cedar

Rapids Community School District. 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 part-time custodian 2 assigned to Kenwood Elementary School, from July 12, 2004 until he voluntarily quit effective March 3, 2006. On or about February 28, 2006, the claimant submitted a written letter of resignation of that date indicating that he was resigning effective March 3, 2006. The claimant resigned because of circumstances with his disability. The claimant was collecting social security disability but was working too many hours and making too much money to continue to receive the disability and the claimant wanted to stop his employment for that reason. Approximately one month earlier the claimant had asked for a reduction in hours from the 20 hours per week that he was working for these reasons. The employer denied such a request. When the claimant was hired, he was hired for 20 hours a week and he was aware of that. The claimant never had any problems working the 20 hours per week nor did he ever express any concerns to the employer about any problems he had working 20 hours per week. The claimant appeared able to do the job despite some disability. The employer was not aware of what disability, if any, the claimant had. The claimant had placed no restrictions on his availability for work except for reducing his hours so as to maintain his disability payments. Employer's witnesses did not know if the claimant was earnestly and actively seeking work. The claimant filed for unemployment insurance benefits effective March 19, 2006 but has received no benefits being shown as disqualified as a result of a voluntary quit. Workforce Development records indicate that the claimant has had no other earnings in his base period except from the employer herein.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is ineligible to receive unemployment insurance benefits because, at relevant times, he is, and was, not able, available, and earnestly and actively seeking work. The claimant is ineligible to receive unemployment insurance benefits for these reasons.

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)(18)(20) 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 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.

(18) The claimant left because of a dislike of the shift worked.

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

The employer's witnesses credibly testified, and the administrative law judge concludes, that the claimant left his employment voluntarily effective March 3, 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 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 did not participate in the hearing and provide reasons attributable to the employer for his quit. The evidence establishes that the claimant essentially quit because he was working too many hours and making too much money to maintain his social security disability payments. The administrative law judge believes that this is similar to one who leaves work voluntarily to keep from earning enough wages during the year to adversely affect his receipt of federal old age benefits which is not good cause attributable to the employer for a voluntary quit. See 871 IAC 24.25(31). At the time of the claimant's hire he was informed that he would be working 20 hours per week part time and this was what he worked throughout his employment. The claimant never had any problems working 20 hours per week and he never expressed any concerns to the employer about being able to work 20 hours per week. Leaving work because of a dissatisfaction with wages or hours when the wages and hours were known when hired is not good cause attributable to the employer. Further, leaving work voluntarily because of a dislike of the shift work is also not good cause attributable to the employer. Finally, leaving work for compelling personal reasons when the period of absence exceeds ten working days, as it does here, is not good cause attributable to the employer. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. The claimant did request a reduction in his hours which the employer denied but the claimant was hired for 20 hours a week and was expected to work that and did so throughout his employment. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily 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.

The administrative law judge does note that the employment herein was part time and the claimant quit part-time employment. However, the claimant had no other earnings in his base period except from the employer herein and, therefore, the claimant is not otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other employers even though his separation here was a voluntary quit of part-time employment. See 871 IAC 24.27.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden to prove that he is able, available, and earnestly and actively seeking work under Iowa Code section 96.4(3) or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). 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 is, and was, at relevant times, able, available, and earnestly and actively seeking work or that he was excused from such requirements. There is no evidence that the claimant is either partially unemployed or temporarily unemployed as defined by Iowa Code section 96.19(38)(b) and (c) so as to excuse him from the requirements that he be available for work and earnestly and actively seeking work. The claimant did not participate in the hearing and provide evidence that is able, available, and earnestly and actively seeking work. The evidence does establish that the claimant has some kind of disability. Although that disability apparently did not interfere with his opportunity to work part time for the employer, because of the existence of the disability, the administrative law judge must conclude on the record here that the claimant has not demonstrated by a preponderance of the evidence that he is able to work. More compelling, the administrative law judge concludes that the claimant is not available for work. The evidence in the record is clear that the claimant had to restrict his hours and wages in order to continue to receive social security disability. When availability for work is unduly limited because the claimant is not willing to work during the hours in which suitable work for the claimant is available or is not willing to work the number of hours required to work in the claimant's occupation, are reasons for the claimant to be disqualified for being unavailable for work. So also is not wanting to earn enough wages during the year to adversely affect receipt of federal old age benefits which the administrative law judge believes is similar to disability benefits. See 871 IAC 24.23(16), (17), and (22). Finally, there is no evidence that the claimant is earnestly and actively seeking work. Accordingly, the administrative law judge concludes that the claimant is not able, available, and earnestly and actively seeking work and there is no evidence that he is excused from any of those provisions and, therefore, the claimant is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he demonstrates that he is able, available, and earnestly and actively seeking work and has requalified to receive unemployment insurance benefits and is otherwise entitled to benefits.

DECISION:

The representative's decision of April 5, 2006, reference 01, is affirmed. The claimant, Gary Heck, 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. The claimant is also ineligible to receive unemployment insurance benefits because, at relevant times, he is, and was, not able, available, and earnestly and actively seeking work.

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