

**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**

**Appeal Number: 05A-UI-03471-DT
OC: 12/26/04 R: 02
Claimant: Appellant (5)**

**SCOTT A WASON
420 – 2ND AVE NE
CLARION IA 50525**

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.

**KIEFER BUILT LLC
PO BOX 88
KANAWHA IA 50447**

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:

Scott A. Wason (claimant) appealed a representative's March 23, 2005 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Kiefer Built, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2005. The claimant received the hearing notice and responded by calling the Appeals Section on April 7, 2005. He indicated that he would be available at the scheduled time for the hearing at telephone number 515-602-6421. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available. Therefore, the claimant did not participate in the hearing. Steve Palmer appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two entered into evidence. Based on the

evidence, the arguments of the employer, 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 September 17, 2003. He worked full time as a painter in the employer's trailer manufacturing business. His last day of work was February 21, 2005.

On February 21, 2005, Mr. Palmer, the employer's human resources manager, who has received training in detecting indicia of impairment, responded to concerns expressed by the claimant's supervisor and made observations that the claimant was under the influence of some substance. The claimant was then informed that he would be sent for a reasonable suspicion drug test. He acknowledged that he did smoke marijuana at home but it did not affect his performance at work. The employer disagreed, and indicated that if a drug test indicated the presence of marijuana in his system, he would be discharged. The claimant replied that he would save the employer the trouble and quit. He then called for a ride to pick him up and then left.

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 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 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. The claimant did express his intent not to return to work with the employer. 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 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. The claimant has not satisfied his burden. Benefits are denied.

In the alternative, even if the separation was deemed to be a discharge, it was for disqualifying reasons. In order for a violation of an employer's drug or alcohol policy to be disqualifying misconduct, it must be based on a drug test performed in compliance with Iowa's drug testing laws. Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). The Eaton

court said, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558. The employer also needs to be in conformance with its own policies. The employer complied with the drug testing regulations and its own policies. A preponderance of the evidence establishes the claimant violated the employer's drug policy.

DECISION:

The representative's March 23, 2005 decision (reference 02) is modified with no effect on the parties. The claimant voluntarily left his employment without good cause attributable to the employer. As of February 21, 2005, 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/sc