

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

DAVID MIDDLETON
3215 SOUTTER AVE SE
CEDAR RAPIDS IA 52403

WINIFREDS
RON GODWIN INC
PO BOX 2805
CEDAR RAPIDS IA 52402

Appeal Number: 06A-UI-05997-BT
OC: 04/16/06 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 Leaving

STATEMENT OF THE CASE:

David Middleton (claimant) appealed an unemployment insurance decision dated May 25, 2006, reference 03, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Winifred's Restaurant (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 June 28, 2006. The claimant participated in the hearing. The employer participated through Brandon Godwin, General Manager and Eric Lewis, Manager.

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 part-time server from May 6, 2005 through April 28, 2006, when he was considered to have voluntarily quit after three days of no-call/no-show. The claimant had sometimes worked full-time, but his hours were dependent upon the employer's business needs and the claimant's performance. No employee was guaranteed full-time hours. The claimant was diagnosed with a non-work-related seizure disorder and the medication he had to take affected his ability to concentrate. His availability to work was reduced since he was not allowed to drive and could only work when he had other transportation.

The claimant was not on the schedule and he met with the employer on April 18, 2006. He was told he had to go through retraining due to his low performance and the manager said he would call the claimant. The manager repeatedly tried to reach the claimant but was unsuccessful because the claimant's phone line was busy and no message could be left. The employer put the claimant on the training schedule at the end of the following week on April 26, 27 and 28, since that would give the claimant time to call in about the schedule. The claimant was a no-call/no-show for training and never called the employer.

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. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant contends he was discharged, but admits no one told him he was discharged. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to return to work or call the employer after April 18, 2006. He was asked why he did not call the employer about returning to work when the employer had not called him and he repeatedly responded with the excuse that the manager said he would call him. Regardless of what he was told, the claimant had some responsibility to contact the employer about his continued employment if he wanted to continue his employment.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated May 25, 2006, reference 03, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/cs