

**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**

**JOSEPH R WEBBER
PO BOX 393
JANESVILLE IA 50647**

**MODERN BUILDERS INC
517 – 1ST AVE NE
WAVERLY IA 50677**

**Appeal Number: 05A-UI-07908-DWT
OC: 07/03/05 R: 03
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:

Joseph R. Webber (claimant) appealed a representative's August 2, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Modern Builders, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 15, 2005. The claimant participated in the hearing. Tami Mauer, the office manager, appeared on the employer's behalf. 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 his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 20, 2004. The claimant worked as a laborer. The employer's written policy informs employees that when employees work more than 75 miles out of town, the employer pays for a motel and gives employees a daily per diem for food. There was no problem with this until May 18, 2005.

On May 18, the claimant's supervisor, P.F., checked employees out of the motel they had been staying at in Ames, told employees to go home and report back to work the next day. P.F. drove one of the employer's vehicles and employees could ride to work with him, but the claimant chose not to do this. The claimant refused to ride with P.F. because the claimant saw him drink and drive the employer's vehicle. Based on the claimant's observations, the claimant concluded P.F. sometimes drove while intoxicated.

On May 19, P.F. assigned the claimant and other employees to work with chemicals that created fumes. The fumes not only caused the claimant a headache but other employees also complained about a headache while doing this work. The employer did not provide any respirators to the employees. When the claimant asked if the employer was providing some safety equipment to the employees, P.F. indicated he did not have any and the work needed to get done.

On May 19, P.F. told employees to go home early. The claimant asked if this was going to become a regular occurrence. P.F. indicated it was because he had decided it was less expensive to leave work early and go home than have the employer pay for a motel room. P.F. also told the claimant that if he did not like P.F.'s decision, he did not have to return to work.

On Friday, May 20, the claimant gave his timecard to Mauer and asked to speak to the vice president in charge of operations, Rusty Stensland. Stensland was not in the office. The claimant gave Mauer his cell phone number and asked Stensland to call him. On his timecard, the claimant noted he would not return to Ames because the employer failed to furnish out-of-town lodging as outlined in the employer's handbook.

The claimant expected Stensland to talk to him about his concerns and give him another job to work at. The employer did not contact the claimant. When the claimant picked up his paycheck on June 27, Stensland was busy interviewing applicants to replace the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The claimant quit his employment by failing to return to work after May 19, 2005. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits employment with good cause when he quits because of a substantial change in the employment arrangement or because of intolerable or detrimental working conditions. 871 IAC 24.26(1),(4). Since the employer did not bother to call and talk to the claimant about P.F.'s decision to make employees drive back and forth from Waterloo to Ames, which contradicted the employer's written policy, the facts indicate that even if the claimant had given the employer more notice, the employer's reaction would have been the same – do nothing. The employer has presented no evidence that would justify P.F.'s decision and make employees drive back and forth from Waterloo to Ames on May 18 and 19. The evidence indicates that since the claimant and other employees had been staying in Ames, P.F. violated the employer's written policy. Based on P.F.'s actions alone in violating the employer's policy, the claimant established good cause to quit his employment. Therefore, as of July 3, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 2, 2005 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of July 3, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc