

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

JAMES MARTI  
210 HULL ST  
LUVERNE IA 50560

WINNEBAGO INDUSTRIES  
PO BOX 152  
FOREST CITY IA 50436-0152

SARAH STILWILL  
ATTORNEY AT LAW  
600 – 1<sup>ST</sup> ST NW STE 103  
MASON CITY IA 50401

Appeal Number: 05A-UI-12110-BT  
OC: 07/03/05 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

James Marti (claimant) appealed an unemployment insurance decision dated November 21, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Winnebago Industries (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 December 15, 2005. The claimant participated in the hearing with Attorney Sarah Stillwill. The employer participated through Gary McCarthy, Personnel Supervisor.

#### 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 full-time assembler/fabricator from January 12, 2004 through October 26, 2005. The claimant was laid off on August 26, 2005 and the employer attempted to re-call him on September 30, 2005. The claimant's telephone number had been disconnected but the employer found an emergency number for the claimant, which was his mother's telephone number. The employer left a message for the claimant to call him and he returned the employer's call on Saturday, October 1, 2005, and left a message for the employer to leave another message with his mother. He called the employer again on Monday, October 3, 2005 and the employer told him he was being called back to work. The claimant said he needed a couple days to think about whether he wanted to come back or not. The employer asked the claimant to call him back on October 5, 2005, which the claimant did. The claimant called in and left a message that he could not start until October 24, 2005 because he had no gas money. He told the employer he would be at the same number for the next 30 minutes and also provided a cell phone number, which was supposed to be hooked up that day. The employer tried the mother's number but there was no answer so he tried the cell phone number but it was not a working number. The employer called the mother's number again at 1:52 p.m. and left a message that October 24, 2005 was acceptable for the claimant to return to work and if he had any questions to call. The claimant never called again and was a no-call/no-show for three consecutive days ending October 26, 2005, after which he was considered to have voluntarily quit his employment.

#### 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.

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(1) 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:

- (1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

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

The claimant did not return to work because he did not have transportation. He said that his car was not licensed, it needed new tires and he had no gas money. However, he told the employer he would return to work on October 24, 2005, but was a no-call/no-show for three consecutive days ending October 26, 2005. The employer's policy provides that employees will be considered to have voluntarily quit his or her employment if they are absent without notice for three days.

An employee quits his job only if he intends to quit and carries out that intent by some overt act. Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when he failed to return to work when work was available. 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 November 21, 2005, reference 01, 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/pjs