

**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**

**PAUL E KRAFT
5816 DIAMOND DR
WATERLOO IA 50701**

**OMEGA CABINETS LTD
1205 PETERS DR
WATERLOO IA 50703**

**Appeal Number: 05A-UI-00301-JTT
OC: 11/28/04 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
871 IAC 24.26(21) – Compelled to Quit or Be Discharged

STATEMENT OF THE CASE:

Paul Kraft filed a timely appeal from the December 29, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 24, 2005. Mr. Kraft participated. Omega Cabinets participated through Amy Victor, Human Resources Representative. Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Paul Kraft was employed by Omega Cabinets as a full-time wood worker from September 9, 2001, through November 18, 2004 when he quit his employment.

The week prior to the Thanksgiving holiday, Mr. Kraft found himself involved in a crisis within his extended family. On Sunday, November 14, Mr. Kraft learned that his niece had attempted suicide. Mr. Kraft took appropriate steps to address his niece's emotional condition. Mr. Kraft also assumed responsibility for transporting his niece's young children from Cedar Falls to his sister's home in Tennessee.

On Sunday, November 14, at 6:30 p.m., Mr. Kraft contacted the employer and left a voice-mail message with his supervisor, David Emerson, indicating that he would be unable to appear for his scheduled shift at 9:00 p.m. Under the employer's attendance policy, Mr. Kraft was expected to notify the employer at least one hour prior to his scheduled shift if he needed to be absent. Mr. Kraft indicated in the message that his absence was due to the need to attend to some family issues and that if Mr. Emerson had any questions he should call. On Monday, November 15, between 3:00-4:00 p.m., Mr. Kraft again contacted the employer and left a message advising that he would be unable to appear for his shift at 9:00 p.m. On Tuesday, November 16, Mr. Kraft twice contacted the employer and left messages regarding his need to take a brief leave of absence to deal with some family issues. Mr. Kraft left a message for his supervisor and another message for Human Resources Representative Amy Victor. Not having received a response to his telephone messages, Mr. Kraft appeared for his scheduled shift on Tuesday at 9:00 p.m.

On November 18, Mr. Emerson called Mr. Kraft regarding his poor attendance earlier in the week. During this conversation, Mr. Kraft advised that he needed an immediate leave of absence to address some family issues and would need to be gone from work during the period of November 18 through December 1. Mr. Kraft had accrued 80 hours of vacation time. Mr. Emerson advised Mr. Kraft that his request for leave was not approved and that he would need to quit his job if he needed to be away from work any longer. Reluctantly, Mr. Kraft made arrangements to meet with Mr. Emerson and Ms. Victor at 1:00 p.m. for the purpose of complying with Ms. Victor's request that he sign a document indicating that he was voluntarily quitting his employment. Mr. Kraft had no desire to quit the employment, but felt compelled to do so in order to meet his responsibility to his family. When Mr. Kraft met with Mr. Emerson and Ms. Victor, he advised them that he did not wish to quit his employment.

The employer has a policy regarding personal leaves of absence where the employee is faced with unusual hardships. Under the policy, the request for leave must be submitted in writing. Though Mr. Kraft made a verbal request for a personal leave of absence, neither Ms. Victor nor Mr. Emerson thought to discuss the personal leave policy and procedures with Mr. Kraft. Instead, Mr. Emerson and Ms. Victor presented Mr. Kraft only with the option of coming to work or quitting his job. When Mr. Kraft inquired as to other options, Ms. Victor advised him that there was nothing else she could do for him. Ms. Victor advised Mr. Kraft that he could re-submit an application after 90 days away from the workplace.

Mr. Kraft ended up dealing with his family business from November 18 to December 1, at which time he would have been available to return to work. The Thanksgiving holiday fell during the period of Mr. Kraft's absence from work. Mr. Kraft would have been scheduled to be off work Thursday and Friday of the Thanksgiving week due to the holiday and the fact that the place of employment was closed in observation of the holiday. Had the employer granted Mr. Kraft the leave of absence he requested, Mr. Kraft would have been away from work for less than ten working days.

When Mr. Kraft was finished addressing the issues within his extended family he contacted Ms. Victor to inquire as to whether he could re-apply for his position.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Kraft's quit was for good cause attributable to the employer. It does.

An individual is disqualified from receiving unemployment insurance benefits if the individual has left work voluntarily without good cause attributable to the employer. See Iowa Code section 96.5(1). Because Mr. Kraft quit the employment, Mr. Kraft has the burden in this matter of proving that his quit was with good cause attributable to the employer. See Iowa Code section 96.6(2). In the case, the employer in essence confronted Mr. Kraft with the option of quitting his job on November 18 or facing discharge after missing future shifts. Because Mr. Kraft was compelled to resign when faced with the choice of resigning or being discharged after he missed additional future shifts, Mr. Kraft's separation from the employment was not a voluntary leaving. See 871 IAC 24.26(21). Given that Mr. Kraft (1) would have been absent from work for a period not exceeding ten working days, (2) had compelling personal reasons to be absent, (3) informed the employer of the compelling personal reasons, and (4) would have immediately returned to work after he completed meeting his family obligations, Mr. Kraft's separation from the employment would have been with good cause attributable to the employer even if Mr. Kraft had not taken the responsibility of appearing for the meeting with Mr. Emerson and Ms. Victor on November 18.

Mr. Kraft's request for leave was a reasonable request. The employer's action in compelling Mr. Kraft to choose between his job and the serious, immediate needs of his family was not reasonable. It would appear to this administrative law judge that Mr. Kraft is precisely the sort of decent, responsible individual Omega Cabinets would want to keep in its employ.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Kraft's quit was for good cause attributable to the employer. Accordingly, no disqualification will enter.

DECISION:

The Agency representative's December 29, 2004, reference 01, decision is reversed. The claimant left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

jt/pjs