

**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**

**KRAIG A WELLMAN
418 BROOKSIDE AVE
EVANSDALE IA 50707**

**JIM HANSEN TRUCKING
1729 F58 ST
HARLAN IA 51537**

**Appeal Number: 05A-UI-01198-DT
OC: 01/02/05 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:

Kraig A. Wellman (claimant) appealed a representative's January 27, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Jim Hansen Trucking (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 18, 2005. The claimant participated in the hearing. Jim Hansen 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 for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on or about November 5, 2003. He worked full time as a driver in the employer's grain and feed trucking business. His last day of work was November 5, 2004.

The claimant normally had weekends off. However, as the employer business was heavily involved with the record harvest, on Thursday, October 7, Mr. Hansen, the owner, told the claimant that the grain elevators would be running over the weekend, and that he needed the claimant to work. The claimant initially indicated that he had plans with his son that weekend, but then responded that he would work. He did then work that weekend.

However, when the claimant reported for work on October 11, 2004, he was angry about having had to work that weekend, and he told Mr. Hansen that he was tendering his two-week notice. Mr. Hansen accepted the claimant's verbal resignation, and decided to sell the truck the claimant had been driving. On October 12, the claimant again approached Mr. Hansen and apologized for being angry the prior day, and indicated his desire to continue working. While Mr. Hansen accepted the apology, he did not tell the claimant that he then considered the resignation to be rescinded, and in fact he proceeded to pursue the sale of the truck. He allowed the claimant to continue working past the two weeks while he sought a buyer. On November 3, he informed the claimant that he had found a buyer and that he needed to have the truck cleared out and the end of the day on November 5, as it would be sold at that time.

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 fact that the claimant apologized and sought to rescind his resignation does not alter the fact that he had resigned and that the employer had accepted the resignation; the employer is not compelled to allow an employee to rescind a resignation once given. Langley v. Employment Appeal Board, 490 N.W.2d 300 (Iowa App. 1992); 871 IAC 24.25(37). 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 Section 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's January 27, 2005 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 5, 2004, 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/kjf