

**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**

**ROBERT A RUNYAN
700 W RIDGEWAY LOT #324
CEDAR FALLS IA 50613**

**LUBBERTS MASONRY INC
1309 GARDEN AVE
WATERLOO IA 50701**

**Appeal Number: 04A-UI-00351-RT
OC: 12-07-03 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 Quitting

STATEMENT OF THE CASE:

The claimant, Robert A. Runyan, filed a timely appeal from an unemployment insurance decision dated January 13, 2004, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on February 2, 2004, with the claimant not participating. Although the claimant had called in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge three times attempted to call that number at 10:01 a.m., 10:02 a.m., and 10:06 a.m., the line was always busy. Because the administrative law judge had easily and timely reached the employer's witness, he proceeded with the hearing and the claimant never called while the hearing was in progress. The claimant must have gotten a copy of the notice and knew when the hearing was because he called in a telephone number where he could be reached and that telephone

number agrees with the claimant's number showing in Iowa Workforce Development records. Donald E. Lubbert, Owner, participated in the hearing for the employer, Lubbert's Masonry, Inc.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time concrete finisher for approximately eight months until he voluntarily quit on December 8, 2003. Although there was work remaining to be done, the claimant never showed up for work on December 9, 10, 11, 2003 or thereafter until after Christmas. The claimant gave no reasons why he did not show up for work and never notified the employer that he was not coming back to work. Work remained for the claimant and in fact the employees, including the claimant, had been told that there was no layoff because there was still work to be done in Cedar Falls, Iowa as well as other work. Shortly after Christmas, the employer's witness, Donald E. Lubbert, Owner, saw the claimant and again told him that work remained available for him. At that time the claimant never offered any explanation as to why he had failed to come to work. Mr. Lubbert again told the claimant that he was not laying anyone off. The claimant then came to work for a few days in January of 2004 but then again quit showing up for work and has never returned to the employer and offered to go back to work. The employer still is not laying off individuals because there is work remaining and available. The claimant expressed concerns to the employer only once about a co-worker and the employer separated the claimant and the co-worker as much as possible. The claimant never indicated or announced an intention to quit over this reason or any other reasons.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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:

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.

871 IAC 24.25(6), (21) provides:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

The administrative law judge concludes that the claimant effectively left his employment voluntarily on December 8, 2003 when he simply quit coming to work without notifying the employer of a reason. In fact the claimant missed work for approximately three weeks without notifying the employer. There was work available for the claimant and in fact he was told that he was not laid off nor were any of the other employees. Leaving work without notifying the employer for that length of time when there was work available both demonstrates an intention to terminate the employment relationship and is an overt act to carry out that intention as required for a voluntary quit by Local lodge #1426 vs. Wilson Trailer Company, 289 N.W.2d 608, 612 (Iowa 1980). Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily. The employer's witness, Donald E. Lubbert, Owner, testified that he saw the claimant after Christmas and again told the claimant that there was work available for him. The claimant came back and worked for a few days in January and then never showed up for work again. Because this work was so brief and the claimant again just quit showing up for work when work was available, the administrative law judge concludes that the claimant effectively quit his employment on December 8, 2003 and that quit continued. Even though the claimant worked for a few days for the employer, he again quit and the administrative law judge concludes under this circumstance that the claimant's quit was actually effective December 8, 2003. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The evidence establishes solely that the claimant just quit coming to work for approximately three weeks and then working a few days and quit coming to work again and has never returned to work. The claimant did not participate in the hearing and provide reasons attributable to the employer for his quit. There was some evidence that the claimant had once expressed concerns to the employer about a co-worker but the employer did his best to keep them separated thereafter. The claimant never indicated or announced an intention to quit over that matter or any other matter. There is not a preponderance of the evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. The evidence seems to indicate that the claimant left his employment because he was dissatisfied with his working conditions or perhaps because he was unable to work with another employee but these are not good cause attributable to the employer.

Accordingly, and for all of the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily on December 8, 2003, without good cause attributable to the employer, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of January 13, 2004, reference 02, is affirmed. The claimant, Robert A. Runyan, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

dj/b