

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

WILLIAM J RICKARD
513 N ELM ST
CRESCO IA 52136

CAMCAR TEXTRON
c/o PERSONNEL
1302 KERR DR
DECORAH IA 52101

Appeal Number: 06A-UI-07507-DT
OC: 06/25/06 R: 04
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:

William J. Rickard (claimant) appealed a representative's July 19, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Camcar Textron (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 14, 2006. The claimant participated in the hearing. Alice Bjergum 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:

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on July 25, 1990. He worked full time as a packager/sorter in the employer's metal fastener manufacturing facility. His regular work schedule was 8:00 a.m. to 4:00 p.m., Monday through Friday. His last day of work was June 6, 2006.

The claimant called in and requested vacation days for June 7 through June 16; although he never spoke directly with his supervisor to learn if the vacation was being granted, the supervisor did allow the vacation. On June 19, the claimant again called in and left a message that he would be out all week. He made some inquiry about medical leave for the week to care for his wife, but did not come in and complete FMLA (Family Medical Leave) paperwork, as he had done in the past when he needed medical leave. The supervisor authorized the application of the claimant's remaining two days of vacation to June 19 and June 20. The claimant again did not make direct contact with his supervisor to learn whether his time off was approved. At least some of that time, including at least June 23, he spent working with a carnival at the Howard County Fair.

The claimant decided to take further vacation the week of June 26 in order to work with the carnival at a fair in Clear Lake, Iowa. He did not directly contact the employer to obtain approval; he assumed the employer would know, since he routinely took two weeks off at the end of June and beginning of July to work with the carnival. However, the claimant had no more vacation that could be taken; even if the claimant had qualified for medical leave the week of June 19 so that the remaining two days of vacation would not have been applied to June 19 and June 20, his vacation time would have expired on June 27, 2006. The claimant did not directly contact the employer until July 3, when he received a letter sent to him by the employer on June 27 advising him that he was considered absent without leave. When the claimant informed the employer he had not been at work because he considered himself on vacation to work with the carnival, the employer determined that the claimant had abandoned his position.

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(25), (27) 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:

(25) The claimant left to take a vacation.

(27) The claimant left rather than perform the assigned work as instructed.

The employer reasonably concluded that the claimant had abandoned his position to take vacation without obtaining direct approval and when he had no vacation left to be taken. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

In the alternative, treated as a discharge, the administrative law judge would find that taking such an extended period of employment without obtaining some direct approval by the employer would constitute a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. It would have been a discharge for reasons amounting to work-connected misconduct. Iowa Code § 96.5-2-a ; 871 IAC 24.32(1)a.

DECISION:

The representative's July 19, 2006 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 19, 2006, 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/kjw