

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

BENJAMIN D JOHNSON
2714 N LINCOLN AVE
DAVENPORT IA 52804

ILLOWA CABLE
4212 KENNEDY DR
EAST MOLINE IL 61244

Appeal Number: 06A-UI-00627-DT
OC: 06/12/05 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:

Benjamin D. Johnson (claimant) appealed a representative's January 6, 2006 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Illowa Cable (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 2, 2006. The claimant participated in the hearing. Gordon Witzel appeared on the employer's behalf and presented testimony from one other witness, Dan Hemphill. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about July 13, 2005. He worked full time as a drop-bury installer in the employer's cable television installation business. His last day of work was November 30, 2005.

The claimant normally went into the employer's office approximately three times per week to pick up and drop off paperwork. He was last in on November 28 or November 29, 2005. After November 30 the claimant did not do any more drop-buries because it had snowed and he assumed that he was done working for the season. He noted that there was enough snow on one yard that he could not see the flag markers for buried utilities. However, he did no contact the employer as to instructions on what he should do.

He did not bring his paperwork into the office and did not otherwise contact or respond to the employer's messages and attempts to contact him through the employer's phone until an intermediary contacted him on the employer's phone on or about December 8, 2005. He spoke to his field supervisor, Mr. Hemphill at that time and agreed to bring in his paperwork, which he did on December 10, 2005. When he came in, he merely dropped off his paperwork and left; he did not clarify with the employer whether the employer was ceasing work for the season. In fact, the employer's business had equipment that let it continue working into the winter season.

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.

Where an individual mistakenly believes that she or he is discharged or laid off and discontinues reporting to work, but was never told she or he was discharged or laid off, the separation is considered a voluntary quit without good cause attributable to the employer.

871 IAC 24.25 provides examples of situations which are considered to be voluntary quits without good cause, including:

871 IAC 24.25(27)(28)(33) 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:

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

(28) The claimant left after being reprimanded.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Inasmuch as the employer had not told the claimant he was fired or laid off and the claimant ceased reporting for work prior to determining the status of his employment relationship with the employer, he acted in a manner such that the employer would reasonably believe he had resigned his position. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify the claimant. Iowa Code §96.6-2. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The representative's January 6, 2006 decision (reference 02) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 30, 2005, 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/s