

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

MICHAEL COLE  
523 S 11<sup>TH</sup> ST  
ESTHERVILLE IA 51334

R JORDAN ENT INC/  
WOODLAND CONTAINER  
C/O CAROL PAWLAK  
PO BOX 110  
AITKIN MN 56431

Appeal Number: 04A-UI-02323-ET  
OC 06-29-03 R 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 24, 2004, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 22, 2004. The claimant participated in the hearing. Brenda Hanson, Office Coordinator, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Woodland Container from April 15, 2003 to January 26, 2004. He was absent December 29, 2003 through January 9, 2004, called

the employer January 19, 2004, and stated he would not be in because his daughter was sick, and was a no-call/no-show January 20, 2004. On January 21, 2004, the claimant called Plant Manager Jamie Clabaugh and said the reason he had been absent so often lately was that Lead Kim Marlin made sexual comments to him. Mr. Clabaugh told the claimant he should have reported the situation to him right away and that he was going to talk to Ms. Marlin immediately. The claimant stated he did not "want to make a big deal out of it" and did not "want anyone to lose their job" but Mr. Clabaugh said he had to take some type of action. The claimant then said it was his word against hers and he did not want to have a meeting about the situation and did not want Mr. Clabaugh to talk to the other employees on the line. Mr. Clabaugh said he had to speak to Ms. Marlin and document his complaint but he would move the claimant to a different department and the claimant indicated that would be acceptable to him. Mr. Clabaugh talked to Ms. Marlin and she said the claimant often made inappropriate comments to her and she felt he was making accusations against her in an effort to prevent the employer from discharging him because of his attendance. Mr. Clabaugh told her that regardless of who was responsible the employer would not tolerate sexual harassment. Later that day Mr. Clabaugh asked the claimant if working in the other department was working out and the claimant said it was fine. On January 23, 2004, Mr. Clabaugh again told the claimant if anything happened he needed to report it right away. He also asked the claimant if everything was okay and the claimant said it was, but if anything changed he would let Mr. Clabaugh know. On January 26, 2004, the claimant was a no-call/no-show. Mr. Clabaugh called his house and someone answered but hung up. Later that afternoon the claimant left a message for Mr. Clabaugh stating he was quitting because people were talking about him reporting the situation with Ms. Marlin and her friends were "staring (him) down." The claimant believed Mr. Clabaugh and Ms. Marlin told other employees about the situation. Mr. Clabaugh told the employer other employees stated they learned of the situation from employee Darren Peterson, the claimant's friend.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without 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.

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. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2 (amended 1998). While the claimant testified that Ms. Marlin started making sexually inappropriate comments when he began working in her department in October 2003, he did not report the situation to the employer until January 21, 2004, at which time his job was in jeopardy because of his attendance. When the claimant told Mr. Clabaugh about the problem, Mr. Clabaugh confronted Ms. Marlin immediately and moved the claimant to a different department so he would not have to work with her. Although the claimant believes

Ms. Marlin and/or Mr. Clabaugh told other employees about the situation, the evidence does not make that scenario any more likely than Mr. Peterson learning about the situation from the claimant and telling other employees. While Ms. Marlin may have talked about the situation with others, there is little the employer can do to prevent one party from discussing the incident other than taking disciplinary action afterward, which is not much consolation to the aggrieved party. The administrative law judge concludes the claimant was possibly subjected to sexually inappropriate comments but also engaged in the same type of behavior himself and did not feel the need to report the situation to the employer until his job was in jeopardy because of his attendance. Once Mr. Clabaugh learned of the problem, he took immediate action to remedy the situation in talking to Ms. Marlin and moving the claimant to another department. The claimant told Mr. Clabaugh things were fine the two days he worked after the move but then was a no-call/no-show and left a message for Mr. Clabaugh stating he quit, without first telling Mr. Clabaugh he felt other people were aware of the situation and that Ms. Marlin's friends were staring at him or giving Mr. Clabaugh an opportunity to address those concerns. Consequently, the administrative law judge concludes the claimant has not established that his leaving was for good cause attributable to the employer. Benefits are denied.

DECISION:

The February 24, 2004, reference 03, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/kjf