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

DENNIS D VAUGHN
310 W CLAY ST
MT PLEASANT IA 52641

IOWA TURKEY GROWERS COOPERATIVE
D/B/A WEST LIBERTY FOODS
PO BOX 318
WEST LIBERTY IA 52776

Appeal Number: 04A-UI-01917-RT
OC: 01-25-04 R: 04
Claimant: Appellant (5)

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
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Dennis D. Vaughn, filed a timely appeal from an unemployment insurance decision dated February 19, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on March 11,2004, with the claimant participating. Carrie Malin, Human Resources Supervisor, participated in the hearing for the employer, Iowa Turkey Growers Cooperative, doing business as West Liberty Foods. Employer's Exhibits 1 and 2 were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 and 2, the administrative law judge finds: The claimant was employed by the employer as a full-time coffin washer from July 14, 2003 until he was separated from his employment on January 24, 2004. The employer had mandatory workdays on Saturday, January 24, 2004 and Sunday, January 25, 2004. When the claimant was first employed he was aware that the employer would have required workdays on Saturdays and/or Sundays if necessary. The employer's practice is to post the weekend work schedule on the Thursday prior to the weekend to be worked. The claimant was absent from work on Thursday, January 22, 2004 for personal illness and he properly reported this absence. When the claimant came to work on January 23, 2004, he saw the notice posted that he was assigned to work on that Saturday and Sunday, January 24 and 25, 2004. Nevertheless, the claimant said nothing to the employer that day about being off either of the next two days.

On January 24, 2004 the claimant came to work for his regular shift from 6:30 a.m. to 3:00 p.m. He asked his supervisor, Shari Wolfe, if he could leave early. She said that she would check to see if she could find a replacement. She could not and she informed the claimant that he could not leave. Nevertheless, the claimant left at 9:00 a.m. to attend a basketball tournament in which his son was involved. His son is nine years old and the claimant wanted to go to the basketball tournament. His son did have other ways to get to the tournament. It was a matter of the claimant wanting to attend the tournament. The claimant did not report to work the rest of that day. On January 25, 2004 the claimant did not show up for work because he went to church. Although the claimant could have worked after church, he did not do so. The claimant did properly report this absence. When he called in on that day he was told to report to human resources on January 26, 2004. He did so and spoke to the employer's witness, Carrie Malin, Human Resources Supervisor. She told the claimant that she would need to check with his supervisor, Ms. Wolfe, about his missing work on Saturday, January 24, 2004, but since Ms. Wolfe was not there that day, the claimant was sent home. Ms. Malin called the claimant the next day after talking to Ms. Wolfe and told the claimant that they were treating his leaving work early on January 24, 2004 as a voluntary quit.

The employer has clear and specific policies in its major rule violations category stating that leaving the plant during company time without permission of a supervisor is a major rule violation and further, constitutes a voluntary quit. The claimant signed an acknowledgement acknowledging these policies, all as shown at Employer's Exhibit 1. At orientation the employees are specifically told to read the minor rule violations and the major rule violations.

The claimant also had prior attendance problems. On January 21, 2004, the claimant left work early without permission for personal reasons but could not remember why. On January 11, 2004, the claimant was absent for personal reasons but could not remember why, although he did properly report this absence. The claimant also had six absences for personal illness, all of which were properly reported. The claimant received a written warning called a "friendly reminder" on November 17, 2003 and a written warning called a counseling one warning, on January 12, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question 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(13), (18), (21), (27) provides:

> (13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.
>
> (18) The claimant left because of a dislike of the shift worked.
>
> (21) The claimant left because of dissatisfaction with the work environment.
>
> (27) The claimant left rather than perform the assigned work as instructed.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant quit when he walked off the job in the middle of his shift on January 24, 2004 without permission and contrary to the employer's policies, as shown at Employer's Exhibit 1. The claimant maintains that he was discharged when he was informed by telephone on January 27, 2004 that his leaving work without permission was treated as a voluntary quit. The administrative law judge is constrained to conclude here that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left his employment voluntarily. The employer has a clear and precise rule, appearing at Employer's Exhibit 1, that it is a violation to leave the plant during company time without permission of a supervisor and that walking off the job will constitute a voluntary quit. The claimant now testifies that he was not aware of that because he did not read the policy. However, the claimant's testimony is not credible. He signed an employee acknowledgment acknowledging that it was his responsibility to read and understand the handbook. The employer's witness, Carrie Malin, Human Resources Supervisor, credibly testified that employees are urged, if they read nothing else in the handbook, to read the minor rule violations and major rule violations sections, which include this relevant rule. The administrative law judge concludes that the claimant knew, or should have known, that walking off the job on January 24, 2004 would be treated as a voluntary quit. The claimant was aware when he was hired that the employer had mandatory workdays on some Saturdays and Sundays and he accepted this. The claimant had a conflict with a basketball tournament, of which he was aware for a week. The claimant was absent on Thursday, January 22, 2004, when the weekend work notice was posted but when he

came to work on January 23, 2004, a Friday, the claimant saw that he was working that weekend, but took no action about the basketball tournament or attempting to get that time off. Rather, the claimant waited until the next day and asked the employer at 7:30 a.m. if he could leave at 9:00 a.m. The claimant should have been aware that this was going to put an undue burden on the employer to find someone to replace him that late on the day that he wanted to leave. The claimant had no good reason why he did not inform the employer of the conflict on January 23, 2004, when it may have been possible for the employer to address his concerns. The administrative law judge notes that it was not a matter of taking his son to the basketball tournament because the claimant testified that there were other ways for his son to get to the tournament. It was rather a matter of his own attendance at the basketball tournament. The administrative law judge understands why a parent would want to attend a basketball tournament of a child, but also believes that there are responsibilities that a parent owes to his employer. Here, the claimant, aware that he needed to work, chose to leave work in any event and the administrative law judge is constrained to conclude that this is a voluntary leaving. Therefore, the administrative law judge concludes that the claimant left his employment voluntarily. 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 meet his burden of proof 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 claimant testified that he left to attend a basketball tournament, but this is not good cause attributable to the employer, as noted above. The claimant seemed to be testifying that he did not like the mandatory weekend work, but the claimant conceded that he knew when he was hired that he would have to work some weekends. The administrative law judge believes that this is similar to leaving work because of a dissatisfaction with wages when the employee knew the rate of pay when hired. Here, the claimant knew that he would have to work weekends and leaving work therefore because of that is not good cause attributable to the employer. Leaving work because of the dislike of a shift or leaving work because of dissatisfaction with the work environment or rather than perform the assigned work as instructed is also not good cause attributable to the employer. There is not a preponderance of the evidence that claimant's working conditions were unsafe, unlawful, intolerable or detrimental, or that he was subjected to a substantial change in his contract of hire.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily 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.

Even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism, and he would still be disqualified to receive unemployment insurance benefits. See 871 IAC 24.32(7). The administrative law judge would conclude that the claimant's leaving work early on January 24, 2004 was not for reasonable cause. Further, the claimant was absent on January 25, 2004, to go to church. Although he could have returned to work after church, he did not do so. The administrative law judge would conclude that this absence also was not for reasonable cause. The claimant also left work early on January 21, 2004 without permission, for personal reasons and was absent on January 11,

2004 for personal reasons. The claimant did not remember either of these occasions and could offer no justifiable reason for them. Accordingly, the administrative law judge would conclude that his leaving work early on January 21, 2004 and his absence on January 11, 2004 were also not for reasonable cause. The administrative law judge notes that the claimant received a written warning on November 17, 2003 and a second written warning on January 12, 2004, and less than two weeks later, walked off the job. Accordingly, even if the claimant's separation should be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism, and would still be disqualified to receive unemployment insurance benefits.

DECISION:

The representative's decision of February 19, 2004, reference 01, is modified. The claimant, Dennis D. Vaughn, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left work voluntarily without good cause attributable to the employer.

b/b