

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

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Appeal Number: 05A-UI-07116-H2
OC: 06-12-05 R: 02
Claimant: Appellant (2)

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:

The claimant filed a timely appeal from the June 28, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Ottumwa, Iowa, on November 9, 2005. The claimant did participate and was represented by Sarah Wenke, Attorney at Law. The employer did participate through Greg Stravers, Human Resources Manager, Ladonna Vanzee, Assistant Human Resources Manager, and Brian Van Kooten, Production Supervisor.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a roll operator full time beginning in April 2004 through June 3, 2005 when he voluntarily quit. The claimant quit because he felt he was being subjected to

intolerable and unsafe working conditions. The claimant's coworkers, including the one who was the brother of a supervisor, made unsavory comments to the claimant about him inserting a gerbil or a family of gerbils into his anus. Another coworker took the claimant's measuring tape and spray painted approximately four feet of the tape because he was unhappy with the claimant's measurement of a product. This same coworker, Dave, also referred to the claimant as a "fucking idiot" on numerous occasions. A few days prior to his quitting the claimant had been nearly hit by a piece of steel when that was knocked over by a fork lift driver. The claimant chewed out the fork lift driver as this was his second 'near miss' on this job. A few days later the fork lift driver assigned the claimant to work on a roll press that he felt was unsafe. The fork lift driver's brother was both his and the claimant's supervisor. The claimant believes that the fork lift driver was retaliating against him as a result of the claimant chewing him out over the near miss earlier in the week. The claimant did not complain to management about the unsafe or detrimental working conditions until just before he quit. As a result of a subsequent investigation conducted after the claimant had quit, a number of his coworkers including the one who drove the forklift and the one who spray painted the claimant's measuring tape were disciplined for inappropriate conduct in the workplace.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with 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 24.26(2)(4) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(2) The claimant left due to unsafe working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment. Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The employer's subsequent discipline of claimant's coworkers establishes that they were engaged in conduct which created a hostile, detrimental and/or unsafe working environment for the claimant, justifying his voluntary leaving. The claimant's coworkers conduct was done in public view of the plant and the employer knew or could have known of the conduct by simple observation of the workers in the workplace. The claimant was subject to an intolerable work environment, his leaving was with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The June 28, 2005, reference 01, decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/tjc