

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

VIRGIL POWER
Claimant

APPEAL NO: 07A-UI-10346-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GEE GRADING & EXCAVATING INC
Employer

**OC: 09/30/07 R: 03
Claimant: Respondent (4)**

Section 96.5-1-a – Voluntary Quit for Other Employment

STATEMENT OF THE CASE:

Gee Grading & Excavating, Inc. (employer) appealed a representative's October 31, 2007 decision (reference 01) that concluded Virgil Power (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been laid off from work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 27, 2007. The claimant participated in the hearing. Larry Kuennen, the foreman, 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 his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant to work the summer of 2006. During the employer's working season, the claimant worked as a full time operator. The employer's season ended in December 2006, but the employer called the claimant back to work the first week of April 2007.

The employer's work is affected by weather. When it is unusually wet as it was in June and early July, the employer did not have much work for the claimant and other employees to do. As a result, the claimant was only able to work 10 to 20 hours a week for awhile. The claimant could not financially afford to work part-time hours. He looked for another job.

The claimant started working full-time for another employer on July 9, 2007. The claimant informed the employer on July 9, that he had accepted a job with another employer. If the claimant had been working full-time hours for the employer, he would not have looked for another job in July.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant voluntarily quits employment because he has accepted and works for another employer, the claimant is not disqualified from receiving benefits and the employer's account will not be charged. Iowa Code § 96.5-1-a.

The facts establish the claimant quit working for the employer after he accepted other employment and went to work for the other employer. Therefore, the claimant is not disqualified from receiving benefits based on the reasons for his employment separation from the employer. The employer's account will not be charged.

(The record indicates that even if the claimant's employment had been for disqualifying reasons, he earned more than ten times his weekly benefit amount between July 9 and September 30, 2007. This means reasons for the claimant's employment separation would not have any legal affect on the claimant's receipt of unemployment insurance benefits.)

DECISION:

The representative's October 31, 2007 decision (reference 01) is modified in the employer's favor. The claimant was not laid off from work. Instead, the claimant voluntarily quit his employment after he accepted another job in which he performed services. Based on the reasons for his employment separation with the employer, the claimant is qualified to receive unemployment insurance benefits as of September 30, 2007, provided he meets all other eligibility requirements. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css