

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GAD L SCOTT
Claimant

VEIT & CO INC
Employer

APPEAL 15A-UI-06078-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/29/14
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 20, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2015. Claimant participated. Employer did not participate.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a laborer from March 16, 2015, and was separated from employment on May 6, 2015, when he quit.

Claimant interviewed on two occasions with Bill Kerr and William Casey Kerr (hereinafter Casey). The Kerrs were claimant's supervisors. They informed claimant during the interviews that he would be operating a dredge machine and he would have insurance from day one. Claimant went to orientation on the first day, March 16, 2015 and was told that he did not receive insurance through the employer, unless he was in the union. Claimant discussed this with Casey. Casey informed claimant he would have to be in the union once he worked for the employer 90 days and qualified on the dredge machine. The job site claimant worked at only had six employees, three on the day shift and three on the night shift. There were three jobs that had to be performed during each shift, each job by a different employee. One of the jobs was the dredge machine operator. Claimant's job was that of laborer or fuel runner. In early May, claimant was informed by Casey that they were getting a new employee, so Casey could now supervise claimant to get qualified on the dredge machine. On May 6, 2015, claimant was told by his supervisor they were going to transfer an employee to another job site so they were back down to six employees and that the job was going to end in early July. Claimant was not going to be able to qualify on the dredge machine after all. Claimant only managed to obtain approximately 12 unsupervised hours on the dredge machine because of the lack of employees. Claimant was never provided insurance through the company.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(1), (23) provides:

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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant quit because of the change in the terms of hire. The changes to the terms of hire were substantial because claimant was not provided the promised insurance and he was not allowed to operate the dredge enough hours to qualify for union membership. Every time claimant

brought up the lack of insurance or working as a dredge operator, the employer reassured claimant he would be able to join the union after 90 days. Claimant finally quit work when the employer again failed to provide him an opportunity to qualify on the dredge machine. Therefore, claimant did not acquiesce to the change in terms of hire. Benefits are allowed.

DECISION:

The May 20, 2015, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs