

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD L SHORT
Claimant

APPEAL NO. 12A-UI-11068-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“NATIONAL BUILDERS INC
“AGRI STEEL EQUIPMENT**
Employer

**OC: 08/05/12
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative’s decision dated September 4, 2012, reference 03, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 31, 2012. Claimant participated. The employer participated by Mr. Kendall Brown, Company President; Travis Schoenewald, Job Foreman, and Troy Bakker, Job Superintendent.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Donald Short began employment with National Builders, Inc. on November 15, 2011. The claimant was employed as a full-time laborer/millwright and was paid by the hour. His immediate supervisor was Troy Bakker.

Mr. Short was considered to be a valued employee by National Builders, Inc. based upon his work skills in erecting towers. The claimant and the crew that he was assigned to was most recently assigned to work in Spalding and Belgrade, Nebraska erecting towers for National Builders, Inc.

On August 2, 2012, Mr. Short reported to work late apparently due to non-work-related activities the night before. At noon Mr. Short was instructed to go from the Belgrade, Nebraska job site to the job site in Spalding, Nebraska for the remainder of the day. En route, Mr. Short requested that Mr. Bakker drop him off at a house that the company had rented for employees in Cedar Rapids, Nebraska. Mr. Bakker concluded that Mr. Short was not feeling well and was tired from his activities the night before and dropped Mr. Short off at his request. On the morning of August 3, Mr. Bakker directed Mr. Short to go to the job site in Spalding, Nebraska. The claimant refused stating, “I guess I’m done then.” Subsequently, Mr. Short and another

employee gathered their belongings and left the job site returning to Hawarden, Iowa. Work continued to be available to the claimant at the time of his leaving.

On July 13, 2012, Mr. Short had met with the company president and another management individual. Although the claimant was given an increase in pay at that time and given a one-week vacation, the employer did not agree that Mr. Short could choose his job locations. The claimant was expected to work with the crew wherever work was assigned and his services were needed.

It is the claimant's position that he had been specifically promised that he would only have to work in Belgrade, Nebraska and that he declined to go to the Spalding location based upon the previous agreement between himself and the company president. It is claimant's further position that he reported for work on August 3 and was discharged by the employer for no reason.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged or that he quit employment. Based upon the evidence in the record, the administrative law judge concludes that Mr. Short quit his employment and was not discharged by the employer on August 3, 2012.

The next question is whether the claimant left employment with good cause attributable to the employer. The evidence in the record establishes he did not.

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(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

The evidence in the record establishes that Mr. Short left his employment based upon dissatisfaction with the requirement that he perform services for the company in work locations at Belgrade and Spalding, Nebraska. On August 2 the claimant had been instructed to report from the Belgrade location to the Spalding location but had requested to go back to his temporary residence in Cedar Rapids, Nebraska apparently because the claimant was tired from his activities the night before. When the employer made the reasonable request again the

following day that the claimant go to the work location in Spalding, Nebraska, the claimant stated, "I guess I'm done then." The claimant then gathered his tools and left the work location and returned home.

The testimony of the employer's witnesses in this case is corroborated by the testimony of the other witnesses. The administrative law judge finds the testimony of the employer's witnesses to be credible and not inherently improbable. Although the administrative law judge is aware that Mr. Short maintains that he was discharged on August 3 for no reason, the administrative law judge finds the claimant's testimony to strain credibility. The employer needed the claimant at the job site due to his special skills and had made special accommodations to the claimant. The accommodations did not include allowing the claimant to choose when he wanted to work and at which job sites he was willing to work. While Mr. Short's reasons for leaving employment may have been good cause reasons from his personal viewpoint, they were not good cause reasons attributable to the employer. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated September 4, 2012, reference 03, is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs