IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

THOMAS A CROZIER Claimant **CARDINAL GLASS INDUSTRIES INC** Employer	**APPEAL NO: 10A-UI-04905-DW** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/08/09** **Claimant: Appellant (5)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's March 25, 2010 decision (reference 03) that disqualified the claimant from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. An in-person hearing was held in Des Moines on May 11, 2010. The claimant participated in the hearing with his attorney, Nicholas Platt. Russell Samson, Attorney at Law, appeared on the employer's behalf with Lori Ramsey, the human resource manager. During the hearing, Employer Exhibits One through Four were offered and admitted. Claimant Exhibits A through E were offered and admitted. Claimant's Exhibit F was offered, but ruling on the admissibility of this exhibit was reserved. As of the date of this decision, Claimant Exhibit F is also admitted as evidence.

Even though the hearing notice indicated an issue of whether the claimant was able to and available, the Employment Appeal Board decided the claimant was able to and available for work. See decision for appeal 10B-UI-010053.

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 benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 18, 1999. The claimant worked full time as a production employee. The claimant worked both second and third shifts during his employment. The claimant typically worked an eight-hour shift. As of December 1, 2008, the claimant accepted a voluntarily layoff. The employer does not dispute the claimant's receipt of unemployment insurance benefits from December 1, 2008, through May 2, 2009.

Although the claimant experienced pain in his feet before December 1, 2008, he did not inform the employer he had problems standing eight hours a day or that he had any problem with his feet. The claimant did not let the employer know that one of the reasons for taking the layoff on December 1, 2008, was due to the pain he experienced while working eight-hour shifts.

The claimant did not seek any medical advice about the pain in his feet when he was on layoff. He did not contact the employer while he was on layoff to let the employer know about the pain in his feet or ask the employer to make him a doctor's appointment. While the claimant was on layoff, the employer decided employees would start working on third shift and would work four, ten-hour days instead of eight-hour days. The employer made this decision for economical reasons and a majority of employees wanted to work ten-hour shifts. (Claimant Exhibit D.)

On April 30, 2009, Ramsey started calling employees to return to work on May 4, 2009. When Ramsey told the claimant the employer was recalling him to return to work on May 4 for ten-hour shifts, the claimant told Ramey he would work eight hours, but could not and would not work ten-hour shifts. When Ramsey asked the claimant to submit paperwork that he was quitting because he refused to return to work when he was recalled, the claimant responded that he was not quitting. The claimant did not return to work for the employer. When the claimant did not return to work, the employer no longer considered him an employee as of May 4, the date he failed to return to work.

The first time the claimant sought medical treatment for his feet was July 9, 2009. The claimant's doctor restricted him to working eight-hour shifts. (Claimant Exhibit B.) The claimant did not contact the employer in July after he had seen a physician. The first time the employer knew about any work restrictions the claimant had was during a November 2009 appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits emolument without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Since the claimant was on a layoff and the claimant did not return to work, the claimant remained unemployed when he declined to accept the employer's recall to work. See decision for appeal 10A-UI-04907-DW.

The claimant's employment separation occurred on December 1, 2008, when he went on a layoff. The temporary layoff changed to a permanent layoff when the claimant did not return to work when recalled. The employer's decision to remove the claimant as an active employee as of May 4, 2009 was the result of the claimant's failure to return to work after he was recalled, not because the claimant quit or was discharged on May 4, 2009.

DECISION:

The representative's March 25, 2010 decision (reference 03) is modified, but the modification has no legal consequence. The claimant's employment separation occurred on December 1, 2008, when he went on a temporary layoff. The employer's decision to remove the claimant as an active employee as of May 4 2010, occurred as the result of the claimant's refusal to return to work after the employer recalled him to work, which was addressed in another decision.

Based on the claimant's refusal to return to work, the claimant is not qualified to receive benefits as of May 3, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

____

Debra L. Wise
Administrative Law Judge

____

Decision Dated and Mailed

dlw/css