

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AARON D KAHLER**  
Claimant

**APPEAL NO. 10A-UI-14810-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACE ELECTRIC INC.**  
Employer

**OC: 02/28/10**  
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated October 20, 2010, reference 04, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 14, 2010. The claimant participated. The employer participated by Jeff Hess, project estimator. The record consists of the testimony of Aaron Kahler; the testimony of Jeff Hess; and Employer's Exhibits 1 through 6.

The issues listed on the hearing notice were whether the claimant was able and available for work and whether the claimant refused to accept suitable work. The actual issue in this case is whether the claimant voluntarily left for good cause attributable to the employer. The parties waived notice on this issue so that the administrative law judge could decide the separation issue.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an electrical contractor. The claimant was hired on April 10, 2009, as an electrical apprentice. The claimant was laid off on March 5, 2010. He was rehired on May 3, 2010, and assigned to a project at the Muscatine County jail.

The claimant's foreman was Kevin Westcott. Mr. Westcott did not testify at the hearing. Mr. Westcott was the foreman assigned to projects that had what the employer termed "tight timelines." He was a driving foreman and kept employees to the schedule.

On May 4, 2010, the claimant and Mr. Westcott got into an argument over what to do about a piece of rebar that was sticking out of a concrete floor that had been torn out. The rebar needed

to be tied down and the claimant did not feel he had the proper tools to complete the job properly. Mr. Westcott disagreed. Mr. Westcott then told the claimant to go back to the employer's facility in North Liberty. The claimant tried to call the employer on the phone. As he was doing so, Mr. Westcott approached the claimant and asked him if he was "fucking leaving or staying." The claimant felt intimidated by Mr. Westcott.

The claimant did not have his vehicle at the job site. He had driven a company vehicle and Mr. Westcott was the passenger. The claimant's car was in Hills, Iowa. The claimant made arrangements to get his car and then came to the employer's office in North Liberty. He filled out an incident report. The claimant was told that if he could not stay on the job and work for the best foreman, then he was terminated.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The first issue in this case is which party initiated the separation of employment. The resolution of this issue is complicated by the fact that the employer provided no direct testimony. Mr. Hess essentially relayed hearsay, as he was not present at the Muscatine job site and did not have any conversations with the claimant. The employer's testimony consists of a statement from Kevin Westcott and Mr. Hess' testimony about what other individuals told the claimant. Mr. Westcott was not present at the hearing to testify. The administrative law judge therefore could not assess his credibility nor could his testimony be weighed against the testimony of the claimant.

The greater weight of the credible evidence in this case is that the claimant and Mr. Westcott got into a disagreement over what should be done about a piece of rebar that was sticking out of the floor. Mr. Hess did testify that Mr. Westcott was a "driving" foreman, and a reasonable inference from the evidence is that Mr. Westcott was more concerned about getting the job done than doing the job in the most optimal manner. The claimant testified that Mr. Westcott was intimidating and used profane language. At one point Mr. Westcott did tell the claimant to leave and the claimant attempted to communicate with the employer about the situation. There is no evidence that the claimant ever said he was quitting.

The employer obviously valued Mr. Westcott's services and apparently someone named Bob decided that if the claimant was not going to work with Mr. Westcott, he was not going to have a job. Mr. Hess admitted that decisions were made before the situation was investigated thoroughly. The administrative law judge concludes that it was the employer that initiated the separation of employment in this case. The claimant did not voluntarily quit his job.

Since it was the employer who initiated the separation of employment, the claimant is not disqualified unless the employer establishes misconduct. There is insufficient evidence of misconduct in this record. As noted previously, the employer provided no direct evidence but, rather, relied on hearsay from Mr. Westcott and other individuals. Findings must be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Iowa Code Sec. 17A.14(1). Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976)

**DECISION:**

The representative's decision dated October 20, 2010, reference 04, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw