

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERENCE MAGILL
Claimant

APPEAL NO: 13A-UI-03070-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRUCE SUPPLIES & CONSTRUCTION
Employer

OC: 02-03-13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 6, 2013, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on April 15, 2013. The claimant participated in the hearing. Scott Bruce, Construction Foreman, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time construction laborer for Bruce Supplies & Construction from November 1, 2007 to February 4, 2013. The week of January 29, 2013, was too cold for the employer's usual outdoor work so the employer found work in the shop for employees to keep them busy rather than decree a lay off. On Monday, February 4, 2013, Construction Foreman Scott Bruce decided the crew was going to work outside on a Red Oak grain elevator. It was 34 degrees and the employer often worked in much colder weather. All employees had their outdoor clothes and the employer, recognizing the cold weather and its effects, allows employees to take frequent breaks inside to get warm. Mr. Bruce left to look at another job site and the claimant called him soon after and asked if there was anything to do in the shop and if not stated he was going home. Mr. Bruce told the claimant he needed to work at the Red Oak job site but the claimant "needed to do what he needed to do." After hanging up Mr. Bruce went back to the office and met the claimant in the driveway, leaving the employer's premises. He asked the claimant what was going on and the claimant stated it was "too fucking cold" and he was not going to work in those elements. Mr. Bruce said he could not prevent the claimant from going home and the claimant left. Mr. Bruce returned to the Red Oak job site and another employee stated the claimant walked off the job. Mr. Bruce worked with the crew for a short time before they took a break at which time he called the claimant and told him he could return to his job. The claimant had been through a recent divorce and Mr. Bruce thought that and other personal issues might be affecting the claimant's decision to walk off and quit his job. He

told the claimant his door was always open. The claimant stated he wanted a raise and Mr. Bruce denied his request, saying he would have to return at the same rate of pay. The claimant said he felt underpaid and was going to look for another job. The claimant had asked for a \$2.00 per hour raise in November 2012 and the employer gave him a \$1.00 raise at that time and indicated it would revisit the issue if the claimant demonstrated more reliability. The claimant had asked for and received advances on his pay and still owes the employer \$500.00 to \$600.00 after deductions were made from his paycheck for repayment of the advances. Mr. Bruce has called the claimant and asked if he wanted to return to work on two previous occasions and did so again during the appeal hearing but the claimant has declined to return to his job with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2.

The claimant was upset about having to work in the cold and chose to walk off the job site and quit his job February 4, 2013. One of the essential functions of his job was a willingness and ability to work in cold weather. The employer routinely worked in cold weather and February 4, 2013, was not a particularly cold day for the employer to work outside. The claimant felt he was underpaid and chose that day to express his displeasure with his pay and having to work in cold weather. The employer gave him a raise in November 2012 and gave him advances on his pay, which it was deducting from his paycheck. The employer offered the claimant an opportunity to return to his job when he called the claimant February 4, 2013, after he walked off the job and again on at least two additional occasions, but the claimant stated he was dissatisfied with having to work in the cold, his rate of pay and that he was going to look for another job. The claimant has not demonstrated that his leaving was due to unlawful, intolerable or detrimental working conditions as those terms are defined by Iowa law. His testimony shows he voluntarily quit his job because he was dissatisfied with his work environment. Under these circumstances, the administrative law judge concludes the claimant voluntarily left his job without good cause attributable to the employer. Therefore, benefits are denied.

DECISION:

The March 6, 2013, reference 01, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs