

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JAMES P TAYLOR
13802 – 60TH AVE
ONSLOW IA 52321

RATHJE CONSTRUCTION CO
PO BOX 408
MARION IA 52302

Appeal Number: 06A-UI-02418-HT
OC: 01/01/06 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, James Taylor, filed an appeal from a decision dated February 14, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 21, 2006. The claimant participated on his own behalf. The employer, Rathje Construction Company (Rathje), participated by Secretary Mary Rathje and General Superintendent John Rathje.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: James Taylor was employed by Rathje from August 9, 2004 until January 23, 2006. He was a full-time equipment operator.

On January 13, 2006, General Superintendent, John Rathje, was called to the work site where Mr. Taylor was working. There was a dispute between the claimant and another equipment operator and the foreman wanted a "neutral" person to resolve the matter. The claimant had, throughout the course of his employment, disagreed with the manner in which the employer chose to conduct the work. In addition, he was annoyed because he had anticipated being laid off for the entire winter to do work on his house and was not pleased to be called back to work during a warm spell in January 2006.

Mr. Rathje appeared at the work site and when the matter seemed to be escalating, told Mr. Taylor to go to the office and talk to Bob Rathje; the owner, about his concerns. The claimant kept demanding an answer as to whether he was "fired or laid off" but the superintendent refused to respond, only telling him to go to the office.

Mr. Taylor did not go to the office and did not return to work on Monday, January 16, 2006. The employer did expect him to return to the same job site but he did not go, preferring instead to wait until the employer contacted him to tell him where to go. The employer did attempt to contact him at his phone number of record but did not receive any answer on the three days the calls were made. He went to the office on Friday, January 20, 2006, to get his check. At that time Secretary, Mary Rathje, asked him why he had not been to work that week and he had no answer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

The claimant maintains he was fired by Mr. Rathje when he was sent home on January 13, 2006, but later contradicted this testimony when he stated he did not consider himself to be fired until January 16, 2006, when the employer failed to call him to tell him where to report for work. However, he further testified that it was not uncommon not to get a call telling him where to report when he was on a long-term job at one site, nor was it uncommon for him to call the employer if he had any questions as to if or where he was to work on any given day.

If, as he maintained, he was fired, he did not express this to Mary Rathje when he was asked why he had not come to work that week. Therefore, the administrative law judge considers the claimant refused to return to work because he expected the employer to call and solicit his return to the on-going work site. This decision not to report for work, or to contact the employer to ask where he should go, must be considered a voluntary quit without good cause attributable to the employer. The claimant is disqualified.

DECISION:

The representative's decision of February 14, 2006, reference 01, is affirmed. James Taylor is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/kkf