

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEAL FOBIAN
Claimant

APPEAL NO: 10A-UI-10752-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LT LEON ASSOCIATES
Employer

OC: 01/17/10
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Neal Fobian (claimant) appealed an unemployment insurance decision dated July 22, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Lt Leon Associates (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 26, 2010. The claimant participated in the hearing with Attorney Christopher Rottler. The employer participated through Owner Luis Leon. Employer's Exhibits One, Two, and Three were admitted into evidence. 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:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired for a three-month contract as a full-time civil engineer on March 1, 2010. The employer anticipated the position would be 40 hours per week with some required overtime. Although no benefits would be offered, the claimant would be paid \$33.00 per hour. Prior to the completion of the contract, the employer would review the claimant's progress and may have offered him a full-time position or simply allowed him to complete the contract.

The employer was just starting his company and worked out of his home in Des Moines, Iowa and the claimant lived in Ames, Iowa. The parties met in a coffee shop in Des Moines to work out the arrangements. The employer immediately began looking for office space in Des Moines and found a place at the beginning of May 2010, at which time the claimant was notified. Since the employer did not yet have an office, he allowed the claimant to work from his home with the employer's computer. The claimant assumed he would always be allowed to work from his

home although the employer was unaware of this assumption or he would not have taken the time to find and rent office space.

The employer stopped by the claimant's house on approximately May 14, 2010 to pick up the computer and he told the claimant he expected him to report to the office on the following Monday. The employer and the claimant spoke on Sunday, May 16, 2010 and the employer advised the claimant he was going to be offered a full-time position with paid holidays but there would not be an increase of pay at that time. The claimant stated he could not afford to travel to Des Moines to work out of the office unless he received a raise and he asked to use the employer's computer but the employer declined stating that he was expected in the office on Monday.

The claimant did not report to work on May 17, 2010 and the employer called him that evening to ask him about it. Again the claimant said he was not going to accept the offer of work based on the wage rate. The employer asked him if he planned on reporting to the office to complete the contract and the claimant said that he did and planned on working Wednesday. The claimant did not call or report to work on Tuesday or Wednesday. The employer called him on Wednesday evening and told him not to bother finishing the remaining of his contract since he was not willing to work in the office.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to report to work on May 17, 2010 and thereafter.

The claimant's attorney argued the claimant was discharged but the claimant testified he quit due to a change in the contract of hire. However, the actual contract of hire mentions nothing about the claimant working at home and if that was something that he wanted and expected, he should have put it in writing. In the struggling labor market today, it is not uncommon for employees to commute to a different town to work. The claimant was being paid a good hourly wage and could have continued working but simply chose not to do so.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden. Benefits are denied accordingly.

DECISION:

The unemployment insurance decision dated July 22, 2010, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are

withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css