

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

MICHAEL SINES
3056 QUINCE AVE
WASHINGTON IA 52353

COLEMAN CONSTRUCTION
2665 WAYLAND RD
WASHINGTON IA 52353

Appeal Number: 05A-UI-12073-BT
OC: 10/30/05 R: 03
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 – Voluntary Quit

STATEMENT OF THE CASE:

Michael Sines (claimant) appealed an unemployment insurance decision dated November 21, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Coleman Construction (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 December 14, 2005. The claimant participated in the hearing. The employer participated through Mark McDole, foreman, and owner Kim Coleman.

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 employed as a full-time laborer from July 8, 2005 through August 8, 2005. He had a problem with attendance from the beginning and the employer stated that he was late on a daily basis. The employer had issued him a written and a verbal warning. He missed a day of work and called the employer on the next day to say that he was running late. His supervisor told him to forget about coming in that day since the employer did not want to wait. The employees usually met in the morning and left for the work site together. The claimant did not return to work but did return to pick up his paycheck. Although the claimant had poor attendance, the employer did not want to discharge him because he was a good laborer when he did show up for work and good laborers are hard to find.

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 or if the employer discharged him for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The employer chose not to discharge the claimant even though there may have cause to do so. The claimant's separation was voluntary. An employee quits his job only if he intends to quit and carries out that intent by some overt act. Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when he failed to return to work after August 5, 2005. He contends that his supervisor fired him and refused to give him the owner's cell phone number. However, had the claimant wanted to contact the owner, he could have easily done 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. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated November 21, 2005, 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.

sdb/tjc