

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER J WULF
Claimant

APPEAL NO. 11A-UI-03994-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN IOWA BUILDINGS INC
Employer

OC: 02/06/11
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Christopher Wulf filed an appeal from a representative's decision dated March 21, 2011, reference 01, which denied benefits based on his separation from Eastern Iowa Buildings, Inc. (EIB). After due notice was issued, a hearing was held by telephone on April 20, 2011. Mr. Wulf participated personally and was represented by Ryan Beattie, Attorney at Law, who offered additional testimony from Jordan Wulf. Exhibit A was admitted on Mr. Wulf's behalf. The employer participated by Zach Sobaski, Owner/President; Justin Sobaski, Vice President; and Lucas Grout, General Manager. The employer was represented by Patrick O'Connell, Attorney at Law. Exhibit One was admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Wulf was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wulf's last period of employment with EIB began in October of 2009. He worked full time as a laborer. He was scheduled to go to Charleston, Illinois, on Monday, January 31, 2011. On January 29, Justin Sobaski (also known as "Gus") told him that someone would be bringing the company truck and trailer to his home on Sunday so that he could leave from there on Monday rather than the shop.

On Sunday, January 30, Lucas Grout and another individual took the truck and trailer to Mr. Wulf's home. Mr. Grout had been drinking and, therefore, brought a sober individual to do the driving. The plan was for them to take Mr. Wulf's car to the shop so that he would have it when he dropped materials there after he returned from his road trip. After Mr. Grout left, Mr. Wulf and his wife determined that they did not want him to have the vehicle. Attempts to reach Mr. Grout were unsuccessful and, therefore, a call was placed to Justin Sobaski. The two became involved in an argument when Mr. Sobaski indicated there was nothing he could do about Mr. Grout having the car. He told Mr. Wulf that he did not care if he ever came back to work for the company but did not want to endanger their life-long friendship over the matter.

Mr. Wulf did not go to work on Monday, January 31. Mr. Grout made the trip to Illinois that he was scheduled to make. That morning, Mr. Wulf sent a text message to Zach Sobaski (also known as "Zippy"), the owner and president of the company. He indicated that someone needed to bring his car back. This was the first indication that Zach Sobaski had that there was some problem. On the evening of January 31, Zach sent Mr. Wulf a text message indicating that he had light-duty work available for him the next day. When Mr. Wulf indicated that he had been fired by Justin, Zach told him he was not fired. When Mr. Wulf indicated that no one should have to deal with Justin, Zach told him he would not have to deal directly with him. He was told he could deal directly with Zach in the future.

Mr. Wulf also had a phone conversation with Justin on January 31. Justin told him he would prefer that they discuss the matter face-to-face and not through phone calls and text messages. Mr. Wulf asked if Justin were not already in enough trouble and whether he was not on probation. Justin also exchanged some text messages with Mr. Wulf's wife on January 30. In one of the messages he said "fuck you" and referred to her as a "dumbass." He later apologized to Mrs. Wulf for his conduct. He never told her, either over the phone or in text messages, that her husband had been fired or that he no longer had a job with EIB.

Mr. Wulf did not return to work even though the employer had light-duty work available for him. There was no indication that the light-duty work would have been performed in the same office where Justin worked. The employer planned to have him distribute flyers regarding the business, a task that could have consumed several months and did not require Mr. Wulf's presence in the office.

REASONING AND CONCLUSIONS OF LAW:

The parties disagree as to whether the separation was a voluntary quit or a discharge. A voluntary quit is a separation initiated by the employee, whereas a discharge is a separation initiated by the employer. Mr. Wulf was not told he was fired, terminated or discharged. He construed Justin's statement that he did not care if he returned to work as a discharge. All Justin was saying was that he did not care whether he returned to work or did not return to work. The administrative law judge does not believe a reasonable person would have construed Justin's statement as a discharge. Moreover, Mr. Wulf was told the very next day by the owner of the company that he was not fired and that work was available. For the above reasons, the administrative law judge concludes that Mr. Wulf initiated the separation when he refused to continue working for EIB. Therefore, the separation was a voluntary quit.

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code § 96.5(1). Mr. Wulf contended that he did not return to EIB because Justin threatened him. He contended that Justin told him he did not have the "balls" to come to Cedar Rapids and deal with him face-to-face. He contended that he felt Justin intended to have him come to Cedar Rapids for the purpose of fighting him. This contention was based on the fact that Justin had an assault charge stemming from an incident in June of 2008. What Justin actually told him was that he wanted them to deal with the issues face-to-face rather than over the phone or through text messaging. Justin did not threaten any bodily harm, either directly or indirectly.

Mr. Wulf also indicated he did not want to return to the workplace because of the content of Justin's text messages to his wife. There is no doubt but that the language was inappropriate. Justin had already acknowledged that he had been a "dick" earlier and apologized for his

comments. It appears that his actions represented an isolated instance of such behavior and not the norm.

Mr. Wulf did not have any prior history of altercations or disagreements with Justin. He did not contact Zach Sobaski to complain that he had been threatened or to complain about Justin's text messages to his wife. He had already been told he would not be required to deal directly with Justin in the future. Mr. Wulf's contention that he left due to intolerable or detrimental working conditions has not been established. At most, Justin's actions constituted an isolated incident in Mr. Wulf's history with the company. The evidence failed to establish any good cause attributable to the employer for the separation. Accordingly, benefits are denied.

DECISION:

The representative's decision dated March 21, 2011, reference 01, is hereby affirmed. Mr. Wulf voluntarily quit his employment with EIB without good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs