

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

KEVIN L OELLRICH  
1631 ELLIS BLVD NW  
CEDAR RAPIDS IA 52405

DOUGLAS CONSTRUCTION INC  
833 SHAVE RD NE  
CEDAR RAPIDS IA 52402-4507

Appeal Number: 04A-UI-06136-HT  
OC: 01/25/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 - Quit

STATEMENT OF THE CASE:

The claimant, Kevin Oellrich, filed an appeal from a decision dated May 28, 2004, reference 05. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 28, 2004. The claimant participated on his own behalf. The employer, Douglas Construction, Inc. (Douglas), participated by Owner Doug Kech.

#### 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: Kevin Oellrich was employed by Douglas from June 9, 2003 until May 12, 2004. He was a full-time crew foreman.

On May 10, 2004, the claimant appeared for work and was told his co-worker had not shown up so the crew could not work. Later, the co-worker told Owner Doug Kech he had quit because he could not work with Mr. Oellrich. The employer conveyed this information to the claimant who then said he would attempt to contact this co-worker and "work things out." However, he was never able to contact the co-worker. On May 11, 2004, the employer said he had a window installation job for the claimant if Mr. Oellrich could get a crew together. The claimant agreed to do the job on Monday, May 17, 2004.

On May 12, 2004, the claimant was again in the office at which time Mr. Kech discussed with him turning in his keys to the office so he would not have to be responsible if anything "came up missing." The claimant turned in his keys on Friday, May 14, 2004, and while there told the office manager he "might as well leave" because he felt he was being "phased out." He did not report for work for the window installation job on May 17, 2004.

#### 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.

Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer LaGrange v. IDJS, (Unpublished, Iowa App. 1984). Mr. Oellrich believes he was fired but there is nothing in the record to establish this. Continuing work was available to him had he elected to appear for the job scheduled May 17, 2004. He is disqualified.

#### DECISION:

The representative's decision of May 28, 2004, reference 05, is affirmed. Kevin Oellrich is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf