

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN ANDERSON
Claimant

APPEAL NO: 06A-UI-08928-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CESSFORD CONSTRUCTION CO
Employer

OC: 11-20-05 R: 02
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 30, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 21, 2006. The claimant participated in the hearing. Joe McGuire, Human Resources Manager and Lonnie Lacina, Project Foreman, participated in the hearing on behalf of the employer with Attorney Paul Peglow. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer for Cessford Construction from August 4, 2000 to August 7, 2006. The claimant was working as a roller operator on a new roller until July 10, 2006, at which time he got off the roller and said he was no longer going to operate it anymore. The employer let him go home and told him to see its workers' compensation doctor and get an excuse before he returned. The claimant was diagnosed with whole body vibration syndrome July 13, 2006, and was released to return to work on the machine four hours per day beginning July 20, 2006. On July 24, 2006, the employer asked the claimant to work on the machine for four hours for the first time since his diagnosis and after doing so for approximately 45 minutes the claimant got off the machine and he could not work on it any longer. The foreman asked the claimant if he wanted to go home and the claimant said yes. He returned July 25, 2006, and the employer told him he had the choice of running the machine four hours per day as stated by the doctor or becoming a laborer. The claimant told the employer he did not think that was fair because they could have given him another machine but the employer did not want to take another employee off a machine and give it to the claimant so the claimant accepted the position as a laborer. After working as a laborer for two-weeks the claimant submitted his resignation because his knees were bothering him from all the walking connected with working

as a laborer. He did not provide any medical documentation about his knees to the employer and did not ask for further accommodations because of his knees. The employer did review the machine the claimant was working on by having the shop manager call the manufacturer and OSHA to conduct an industry survey but OSHA was not able to perform that task because the claimant made a complaint to OSHA. When OSHA came out to investigate the claimant's complaint the investigator said there was nothing citable on the machine. The manufacturer sent a representative and found the machine to be within acceptable limits.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant was diagnosed with full body vibration syndrome after working on the new roller. His doctor released him to return to work on that machine four hours per day effective July 20, 2006. When the claimant decided he could not work on that machine for four hours the employer offered him a position as a laborer which, after complaining that the employer would not remove one of the other workers from a roller, the claimant accepted the laborer job. After working that job for approximately two weeks the claimant voluntarily quit because his knees were bothering him. He did not provide the employer with a doctor's excuse stating he was having problems with his knees or ask the employer if it could make any reasonable accommodations for his knee problems. The employer made reasonable accommodations in only having him work on the machine for four hours and then again by offering him a position as a laborer. In the meantime, the employer asked its maintenance department to contact the manufacturer as well as OSHA and was trying to fix the problem but OSHA did not find anything citable and the manufacture found the machine to be within specifications. The employer accommodated the claimant by allowing him to work four hours per day on the roller and to work as a laborer. The claimant chose not to seek medical attention about his knees and consequently deprived the employer the opportunity to accommodate that condition as well. It appears the employer made a good faith effort to accommodate the claimant's known medical conditions. Therefore, the administrative law judge concludes the claimant has not demonstrated that his leaving was for good cause attributable to the employer as defined by Iowa law. Consequently, the administrative law judge concludes the claimant voluntarily left his employment and has not demonstrated that his leaving was for good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The August 30, 2006, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,620.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs