

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY T SEYDEL
Claimant

APPEAL NO. 13A-UI-08145-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY CONSTRUCTION GROUP LC
Employer

OC: 06/02/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quit
Section 96.5-3-A – Work Refusal

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated July 3, 2013, reference 02, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on August 20, 2013, by telephone conference call. The hearing could not be completed that day because of missing exhibits. The case was rescheduled for August 29, 2013. The claimant participated personally. The claimant was represented by Mary Hoefer, attorney at law. The employer participated by Jon Tiemeyer, owner. The record consists of the testimony of Jon Tiemeyer; the testimony of Gregory Seydel; Claimant's Exhibits A-D; and Employer's Exhibits 1-4.

ISSUE:

Whether the claimant was separated from his employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a commercial general contractor. The claimant was hired on September 20, 2011, as a full-time construction worker. The claimant's last day of work was February 13, 2013. The claimant had sustained a work-related injury in October 2011. The injury was a biceps tear. He was off work after February 13, 2013, for surgery as a result of that work-related injury. The claimant was released to full-duty without restrictions on May 8, 2013. The claimant was offered return to work with the employer, which he refused. The claimant then established a claim for unemployment insurance benefits on June 2, 2013.

On June 7, 2013, the claimant had a telephone conversation with Jon Tiemeyer, the owner. During that conversation, the claimant's potential return to work was discussed. In addition to the worker's compensation claim for a biceps tear, which had occurred in October 2011, the claimant had a claim for shoulder injury. The worker's compensation carrier for the employer had denied this claim. Mr. Tiemeyer was reluctant to allow the claimant to return to work

because of this pending worker's compensation claim concerning his shoulder. No definite offer of work was made on June 7, 2013.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to establish misconduct.

The claimant is eligible for unemployment insurance benefits. The most reasonable inference from the evidence is that the employer initiated the separation of employment in this case. When the claimant's possible return to work was discussed on June 7, 2013, the employer expressed his understandable concern about the claimant's ability to work since he had a pending worker's compensation claim concerning his shoulder. Mr. Tiemeyer did not want the claimant to return to work if working would somehow aggravate his shoulder condition. The claimant had no restrictions imposed on him by a physician but he too was reluctant to do the work required of a general laborer. He was willing to do other jobs. No definite offer of employment was made on June 7, 2013. The claimant clearly did not quit his job. Alternatively, the claimant was not discharged for misconduct. The administrative law judge concludes that the claimant was separated from his employment but for no disqualifying reason. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated July 3, 2013, reference 02, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs