

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER M O'SHEA**  
Claimant

**APPEAL NO: 13A-UI-07362-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEWT MARINE SERVICE  
DUBUQUE BARGE & FLEETING SVC CO**  
Employer

**OC: 01/06/13  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Christopher M. O'Shea (claimant) appealed a representative's June 17, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Newt Marine Service/Dubuque Barge & Fleeting Service Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 25, 2013. The claimant participated in the hearing. Sheila McCarty appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit for a good cause attributable to the employer?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on June 28, 2008. He worked full time as a yard laborer when he was working in the employer's yard, and an equipment operator (usually a dozer), when he was working on a client job site. His last day of work was May 24, 2013. He provided his notice to the employer on May 14. He intended to find work elsewhere, but did not have a definite job arranged when he provided his notice. His reason for quitting was dissatisfaction with not already being placed on a higher paying operator position by the middle of May.

The claimant understood that when he worked in the employer's yard as a laborer, he would be paid \$17.00 per hour. However, when he worked as an operator on a client's job site, he would be paid much more per hour; on the job the claimant had been working in the fall of 2012 before the end of the season, he had been earning \$48.00 per hour. The employer had indicated to

him that he would be returned to that job and pay when work resumed on the project in the spring of 2013. By May 14 the claimant had not yet been returned to that position.

It was not unusual for the claimant to spend a few months in the spring working at the lower rate in the yard, waiting for weather and ground conditions to allow for resumption of construction activities. Because of an extended period of flooding and wet weather in the spring of 2013, full time resumption of work on the construction job, or any other client jobs, and not yet occurred by May 14 or even May 24. While a few persons went to the job site for a few days prior to May 14, there was not a dozer operator involved, and the result of the visits of the few persons to the site was to determine that it was still too wet to resume construction. Full-time construction at the site or any other client job site did not occur until late June or early July. By that time, the claimant had already left the employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting because of a dissatisfaction with a wage that had previously been agreed to is not good cause for quitting. 871 IAC 24.25(13). Quitting to seek other employment, where other employment has not been arranged in advance, is not good cause for quitting. 871 IAC 24.25(3). The claimant's employment arrangement with the employer had included being paid the lower wage for work in the yard until work at a client site at a higher wage became available. The claimant has not satisfied his burden. Benefits are denied.

**DECISION:**

The representative's June 17, 2013 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of May 24, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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