

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVIS, THOMAS, J**  
Claimant

**APPEAL NO. 12A-UI-10363-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KG ENTERPRISES CORP  
TWO MEN AND A TRUCK**  
Employer

**OC: 07/15/12  
Claimant: Appellant (4)**

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

**STATEMENT OF THE CASE:**

Thomas Davis filed a timely appeal from the August 17, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 24, 2012. Mr. Davis participated. Scott Gerlach, co-owner, represented the employer.

**ISSUE:**

Whether Mr. Davis voluntarily quit the employment for the sole purpose of accepting other employment and performed work for the new employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Davis was employed by KG Enterprises Corporation, d/b/a Two Men and a Truck, as a full-time lead truck driver from June 2011 until February 9, 2012, when he voluntarily quit to accept new employment with Classic Home Remodeling, Inc. Mr. Davis started work with the new employer within a couple days of separating from KG Enterprises, Corp., and did perform work for the new employer. While Mr. Davis had concerns about the employment at Two Men and a Truck that factored into his decision to leave, these mostly dated from 2011, and at the time of the separation, the basis for the separation was acceptance of the new employment.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.]

The administrative law judge must follow the plain language of the statute.

The evidence in the record establishes that Mr. Davis voluntarily quit the employment with KG Enterprises Corp., Two Men and a Truck, without good cause attributable to that employer and for the sole purpose of accepting new employment. Mr. Davis performed work for the new employer. The separation from employment would not disqualify Mr. Davis for unemployment insurance benefits. Mr. Davis is eligible for benefits, provided he meets all other eligibility requirements. KG Enterprises Corp., Two Men and a Truck, will not be charged for benefits paid to Mr. Davis.

**DECISION:**

The Agency representative's August 17, 2012, reference 01, decision is modified as follows. The claimant voluntarily quit the employment, without good cause attributable to the employer, to accept other employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employers account will not be charged.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs