

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J TIETSORT
Claimant

APPEAL NO. 13A-UI-00341-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 12/02/12
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Michael TietSORT filed a timely appeal from the January 9, 2013, reference 03, decision that denied benefits in connection with a September 29, 2012 separation from Labor Ready Midwest, Inc. After due notice was issued, a hearing was held on February 11, 2013. Mr. TietSORT participated. Jackson Redding, Customer Service Representative, represented the employer.

ISSUES:

Whether Mr. TietSORT separated from the employment at Labor Ready Midwest, Inc., for a reason that disqualifies him for unemployment insurance benefits.

Whether the employer's account may be relieved of liability for benefits paid to Mr. TietSORT.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Labor Ready Midwest, Inc., is a temporary employment agency with a branch office in Council Bluffs. Michael TietSORT last performed work for Labor Ready in a one-day assignment at Select Comfort on September 28, 2012. Mr. TietSORT completed the assignment. On that same day, Mr. TietSORT notified a Labor Ready representative that he would no longer be available for temporary employment work assignments because he had accepted full-time employment at Menards that was to start the following Tuesday. Mr. TietSORT did indeed commence working at Menards the following week.

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. Tietzort voluntarily separated from Labor Ready Midwest, Inc., for the sole purpose of accepting other, better employment with Menards. The quit to accept other employment would not disqualify Mr. Tietzort for unemployment insurance benefits. Mr. Tietzort is eligible for benefits provided he is otherwise eligible. The quit was without good cause attributable to Labor Ready Midwest. According, that company's account will not be charged for benefits in connection with the claim year that started for Mr. Tietzort on December 2, 2012.

DECISION:

The Agency representative's January 9, 2013, reference 03, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer, but for the sole purpose of accepting other employment and performed work in the new employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account will not be charged for benefits paid to the claimant in connection with the December 2, 2012 original claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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