

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KEVIN W IRVIN**  
Claimant

**ALL STATE GUTTER INC**  
Employer

**APPEAL 14A-UI-06884-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/18/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 26, 2014 (reference 02) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on July 24, 2014. Claimant participated. Employer participated through company president/owner Rick Ross and office manager Deb Nixon. Employer's Exhibit One (pages 1 – 8) was received. Employer's proposed Exhibit, with the W2 forms, was not admitted since it was not submitted in time to send it to the claimant.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a gutter installer September 13, 2004 and was separated from employment on Monday, June 9, 2014. His last day of work was Thursday, June 5, 2014. He quit reporting to work. Continued work was available. He quit in part because he thought his income was reduced from what it was before his work-related shoulder injury more than a year earlier. His leave began on April 4, 2013. The work-related shoulder surgery was on May 10, 2013 and he returned to work on June 7, 2013. He accepted a voluntary layoff on December 27, 2013 and returned to work in the spring of 2014. His most recent wage history is:

2nd Qtr 2013	3rd Qtr 2013	4th Qtr 2013	1st Qtr 2014	2nd Qtr 2014
\$2,266	\$8,816	\$10,360	0	\$3,025

He wanted to work on the six-inch gutter crew because the jobs cost more and that resulted in slightly higher pay even though the percentage was the same as five-inch gutters. He had an argument with a coworker and was placed on a crew with someone else. When he returned from a short-term layoff in May 2014, he was put back on the crew with the arguing coworker and was instructed to inform Ross if he had any problems. He did not. Crews perform all types

of jobs including clean out jobs and repairs. Claimant did ask Ross why he was not on the six-inch crew and was told he was getting too old to carry ladders around. Claimant is age 53. This was in response to claimant's statements to Ross that he did not like getting on ladders or roofs any longer. Most six-inch gutters are on higher and steeper pitched roofs. There was more cleaning and repair this year because of the rain and less new construction. Claimant used to work longer hours but opted to go home early, nearly every work day at 3:00 p.m., so he made less than his coworkers.

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

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(6), (13), (22), (27) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(22) The claimant left because of a personality conflict with the supervisor.

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). An employer has the right to allocate personnel in accordance with its needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. \_\_\_\_/\_\_\_\_, Iowa Ct. App. filed \_\_\_\_, 1986).

Claimant's decision to quit because he did not agree with the work assignments were not for a good cause reason attributable to the employer. Benefits are denied.

**DECISION:**

The June 26, 2014 (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily left the 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.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/can