

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VERNON J WENGER**  
Claimant

**APPEAL NO. 14A-UI-07226-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACTIVE THERMAL CONCEPTS INC**  
Employer

**OC: 06/01/14**  
**Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 9, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged. After due notice was issued, a hearing was held on August 6, 2014. Claimant Vernon Wenger did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Matt Yamilkoski, Operations Director, represented the employer. Exhibits One through Five were received into evidence. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant, which record indicates that no benefits have been disbursed to the claimant in connection with the claim that was effective June 1, 2014.

**ISSUE:**

Whether Mr. Wenger separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Active Thermal Concepts is a commercial contractor dealing in asbestos, mold, and lead abatement, as well as insulation and dirt moving. Matt Yamilkoski is Operations Director. Vernon Wenger was employed by Active Thermal Concepts as a full-time transport driver from September 2013 until May 13, 2014, when he voluntarily quit the employment. The employer is headquartered in Hiawatha. The nature of the employer's business makes it necessary for the employer's crew to sometimes work on projects outside the state of Iowa. Toward the end of the employment the employer was commencing work on a substantial project in Wisconsin. Mr. Wenger transported equipment to the job site in Wisconsin over the course of several weeks. When Mr. Wenger worked out of town, the employer provided him with a per diem allotment for food and lodging. Mr. Yamilkoski had hired Mr. Wenger and had made certain at the time of hire to tell Mr. Wenger that the work required substantial work out-of-town and out-of-state.

On May 13, 2014, Mr. Wenger unexpectedly appeared at Mr. Yamilkoski's office in the Cedar Rapids area. Mr. Wenger was supposed to be working in Wisconsin. Mr. Wenger asked

Mr. Yamilkoski what work Mr. Yamilkoski wanted him to perform. Mr. Yamilkoski explained to Mr. Wenger that the work he had for Mr. Wenger was in Wisconsin and that he did not have any work for Mr. Wenger at present in the Cedar Rapids. Mr. Yamilkoski told Mr. Wenger that if he did not want to return to Wisconsin and perform the work the employer had for him there, then the employment was done. Mr. Wenger elected to separate from the employment, rather than return to Wisconsin.

Mr. Wenger established a claim that was effective June 1, 2014, but has not received any benefits in connection with the claim.

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

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(27), (32) 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 section 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 section 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:

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

(32) The claimant left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required by the job.

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.

The evidence in the record indicates that Mr. Wenger voluntarily quit the employment due to dissatisfaction with the work location, even though Mr. Wenger knew at the time he accepted the employment that it would involve out-of-state work. The voluntary quit was without good cause attributable to the employer. Accordingly, Mr. Wenger is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits .

Because no benefits have been disbursed, there are no overpayment or repayment issues to be addressed.

**DECISION:**

The claims deputy's July 9, 2014, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs