

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH C MITCHELL
Claimant

APPEAL NO. 08A-UI-11555-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

**OC: 11/16/08 R: 04
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit
Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Keith Mitchell filed an appeal from a representative's decision dated December 4, 2008, reference 01, which denied benefits based on his separation from Allsteel, Inc. After due notice was issued, a hearing was held by telephone on December 23, 2008. Mr. Mitchell participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Mitchell was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Mitchell was employed by Allsteel, Inc. for approximately four years ending November 12, 2008. He was last employed full time as a utility person and painter. On November 12, he was asked to submit to a random drug test. He refused and was told he would be discharged for the refusal. Mr. Mitchell consulted with human resources and was told it would be easier to bring him back to work at a later date if he were to quit rather than be fired. He then signed a voluntary resignation letter.

Mr. Mitchell had tested positive for drugs approximately four months before his separation. He was given the option of being discharged at that time or going through rehabilitation. He chose rehabilitation and underwent treatment for eight weeks. Upon his release from treatment, the employer had him sign a document which indicated he could be randomly tested for drugs at anytime during the coming two years. Mr. Mitchell felt the drug testing constituted harassment and, therefore, refused the testing on November 12. He would have been paid for his time while being tested and would have received \$5.00 to compensate him for driving to the test site. Mr. Mitchell chose to quit so that it would be easier to be rehired in approximately one year.

REASONING AND CONCLUSIONS OF LAW:

Mr. Mitchell had the choice on November 12 of submitting to the testing, refusing the testing, or quitting. Since he refused the testing, his remaining options were to be discharged or quit. Mr. Mitchell chose to quit. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Mitchell quit because he did not want a discharge on his record. He wanted to return to work for Allsteel, Inc. at some future point and the employer told him it would be easier if he quit. The fact that he wanted to keep his record clear did not constitute good cause attributable to the employer for quitting.

Where an individual is given the option of quitting or being discharged, the separation is not a voluntary quit. See 871 IAC 24.26(21). The administrative law judge notes that the option of quitting or being discharged was not initially offered by the employer. The subject of quitting did not arise until Mr. Mitchell questioned human resources as to what he should do. However, even if the administrative law judge were to conclude that the separation was a discharge, Mr. Mitchell still would not be entitled to job insurance benefits.

Mr. Mitchell was going to be fired for refusing to undergo a random drug test. There was no evidence that the testing did not comply with the provisions of Iowa's drug testing laws found at Iowa Code section 730.5. Mr. Mitchell was told he would be discharged if he did not submit to the testing. Moreover, he had signed an agreement when he completed drug treatment that he could be tested randomly during the next two years. The employer had a vested interest in maintaining a drug-free workplace. Employees who report to work under the influence of alcohol or other drugs pose a risk to the health and safety of other workers. An individual who refuses to cooperate in drug testing compromises the employer's ability to maintain a drug-free workplace. Such a refusal would constitute a substantial disregard of the employer's standards and interests.

After considering all of the evidence, the administrative law judge concludes that Mr. Mitchell is not entitled to job insurance benefits based on either a quit or a discharge. Accordingly, benefits are denied.

DECISION:

The representative's decision dated December 4, 2008, reference 01, is hereby affirmed. Mr. Mitchell quit his employment for no 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css