IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL E VAN SCOYK
Claimant

THE WEITZ CONSTRUCTION CO INC
Employer

APPEAL NO: 12A-UI-00298-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/27/11
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Michael E. Van Scoyk (claimant) appealed a representative's December 30, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with The Weitz Construction Company, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 7, 2012. The claimant participated in the hearing and was represented by Brad Gezel, Union Representative, who also testified on his behalf. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on June 14, 2011. He worked full time as a laborer/operator at the employer's Ames, Iowa parking ramp construction project. His last day of work was November 7, 2011. He voluntarily quit work on November 29 by informing the employer he was not going to return to work with the employer. He had decided to cease working with the employer because the employer was directing him to perform work for which he was not qualified.

The claimant was hired by the employer through his union local; he was qualified through the union to work as first a laborer, and second an operator. The agreement between the employer and the union was that employees would only be required to perform work which was within the position for which they were qualified. In late October the employer's project superintendent

began requiring the claimant to perform tasks which were not within the functions described for laborers or operators, but rather were functions performed by carpenters, who were paid at a higher scale than the laborers and operators. Examples of functions the employer was instructing the claimant to perform were nailing shoring and cutting lumbar, which were not functions listed for laborers and operators. While performing these functions on November 2, the claimant injured his arm. As a result, he called off work on November 3 and November 4. He returned to work on November 7, and was again directed to perform functions outside of those listed for a laborer or operator. His injury flared up again, so he called off work thereafter. He had discussions at that time the employer in which he indicated he had been injured while performing duties outside of his area of qualification.

He sufficiently recovered from his injury by about November 29, so that he could have returned to work. However, he advised the employer on that date that he was not going to return to work, but rather was going to retire from the union, at least in part because he was being required to perform work outside of his specified job.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1). A "contract of hire" is merely the terms of employment agreed to between an employee and an employer, either explicitly or implicitly; for purposes of unemployment insurance benefit eligibility, a formal or written employment agreement is not necessary for a "contract of hire" to exist. See *Wiese v*. *Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for directing the claimant to perform work outside of the work he was qualified to perform, that requirement was a substantial change in the claimant's contract of hire. *Dehmel*, supra. Benefits are allowed.

DECISION:

The representative's December 30, 2011 decision (reference 01) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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