

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JOEL E VALENTINE**  
Claimant

**FLAGGER PROS USA LLC**  
Employer

**APPEAL 15A-UI-13076-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/01/15**  
**Claimant: Appellant (2/R)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 20, 2015 (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on December 15, 2015. The claimant participated personally. The employer participated through Kaleena Middendorf.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed full time as a flagger. The initial decision dated November 20, 2015 (reference 02) refers to the employer as a temporary employment firm, and disqualified the claimant from benefits for the claimant's failure to seek additional assignment after an assignment ended. However, the employer is not a temporary employment firm. Further, there has been no separation in the employer/employee relationship.

The claimant filed his unemployment claim, with an original claim date of November 1, 2015, in response to his hours being reduced for this employer. The claimant was working on a job crew and was asked to be removed by the employer's client due to repeatedly sleeping on the job. The employer has contracts for different job sites and while some employees float from job crew to job crew, the claimant had been on a constant site that was expected to last for about three years. The employer did not discharge the claimant for sleeping or being removed from the job crew but instead has repeatedly attempted to move the claimant to a new job crew.

The employer has work available to the claimant and the claimant's hours have not been reduced as a result of a lack of work. The claimant has worked reduced hours and no hours some weeks as a result of his either calling off or failure to accept job crew assignments to him. For example, the claimant text messaged the employer at 11:50 p.m. on November 12, 2015 to

state he would not be at work on November 13, 2015. The claimant no-call/no-showed to work on November 20, 2015. On December 2 and December 7, 2015, the employer left messages for the claimant about a job crew. The claimant asserted he has three phone numbers and does not believe the employer is making attempts to reach him at all three numbers, and he will not work if it requires an overnight hotel stay; even though the position for which he was hired is a traveling position. Consequently, the claimant has not worked full-time hours since filing his original claim for benefits.

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

For the reasons that follow, the administrative law judge concludes there has been no separation.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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 Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

In this case, there is still an active relationship between the claimant and the employer, as the claimant has not been laid off due to a lack of work, discharged or quit. No disqualifying evidence was presented on the matter of separation.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Based on the testimony presented, issues related to the claimant being able to and available for employment, and possibly refusal of suitable offers of work have been presented. The able to and available for work issue delineated in the findings of fact are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The November 20, 2015 (reference 02) unemployment insurance decision is reversed. The claimant has not separated from employment for a disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

**REMAND:**

The able to and available for work issue and refusal of suitable offer of work issue delineated in the findings of fact are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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