

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE W HOLDERNESS
Claimant

APPEAL NO. 08A-UI-00359-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROELL REDI-MIX INC
Employer

OC: 12/02/07 R: 03
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kyle Holderness filed an appeal from a representative's decision dated January 4, 2008, reference 01, which allowed benefits from December 2 through December 15 on a finding that he was discharged prior to the effective date of his resignation. The decision denied benefits after December 15 on a finding that his separation was not for good cause attributable to the employer. After due notice was issued, a hearing was held by telephone on January 28, 2008. Mr. Holderness participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Holderness 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. Holderness began working for Croell Redi-Mix, Inc. on August 1, 2007 and worked full time as a powder mixer and driver. On or about November 27, he gave notice that he was quitting to go to school. He anticipated his last day would be December 11, 2007.

On or about December 5, Mr. Holderness was notified that he was being laid off due to lack of work. Others were being laid off by the employer during the same time frame. It is expected that work will resume in approximately March of 2008 or when weather permits. Mr. Holderness began classes at Kirkwood Community College on January 9, 2008. Workforce Development has granted Division Approved Training (DAT) for the period January 6 through May 10, 2008.

REASONING AND CONCLUSIONS OF LAW:

It appears undisputed that Mr. Holderness gave notice that he was quitting in order to go to school. 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). The term "good cause attributable to the employer" generally refers to some

matter over which the employer has control. Mr. Holderness quit to attend school, a decision that was strictly his own. As such, his intended separation was not for good cause attributable to the employer. See 871 IAC 24.25(26).

Mr. Holderness fully intended to work through December 11, 2007 to complete his two week's notice. However, he was released from employment prior to the effective date of his resignation. Ordinarily, he would be entitled to benefits from the last day worked until the effective date of the resignation. See 871 IAC 24.25(38), 24.26(12). However, Mr. Holderness's release on December 5 was due to a seasonal layoff. Had he not given his resignation, he would have been unemployed as of December 11 due to a layoff. Since he would have been without work anyway, the layoff supersedes the resignation. Where an individual quits in advance of a layoff, benefits are denied from the last day worked until the date of the layoff. See 871 IAC 24.25(40). Mr. Holderness was laid off on his last day of work.

Inasmuch as the employer's layoff is expected to last until the spring, Mr. Holderness would have remained unemployed until that time, had he not resigned. He has been approved for DAT effective January 6, 2008. Although he would still have been on layoff, the employer's account will not be charged for benefits paid to Mr. Holderness as of January 6, 2008 as no employer's account is charged when an individual is in training with the approval of Workforce Development. See Iowa Code section 96.4(6)a.

Mr. Holderness is allowed benefits effective December 2, 2007 as he was laid off due to lack of work prior to the effective date of his resignation and would have remained on layoff until approximately March of 2008.

DECISION:

The representative's decision dated January 4, 2008, reference 01, is hereby reversed. Mr. Holderness is allowed benefits effective December 2, 2007 as he was on layoff due to lack of work. The employer's account will not be charged for benefits paid to Mr. Holderness from January 6 through May 10, 2008 as he is on DAT.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs