IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

DUSTIN M SUNDAY
Claimant

APPEAL NO. 12A-UI-13061-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BECKWITH COMMERCIAL ROOFING INC
Employer

**OC: 12/04/11
Claimant: Appellant (4)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Dustin Sunday (claimant) appealed a representative's October 23, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Beckwith Commercial Roofing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 3, 2012. The claimant participated personally. The employer participated by Shelly Field, Office Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 10, 2006, as a full-time lead man. He was normally laid off by the first of December of each year. In 2012, the claimant had some personal issues and needed to be home. He talked to the office manager about being laid off early. She indicated that he needed to discuss the issue with Jeff Beckwith about an early layoff. Communications failed. The employer understood that the claimant was leaving early due to personal reasons. The claimant thought he was being granted an early layoff. The claimant's last day of work was September 28, 2012. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.25(29) provides:

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

871 IAC 24.26(13) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied from September 28 through December 1, 2012. The employer would have laid off the claimant due to a lack of work on December 2, 2012. Since the layoff was scheduled to begin on or about December 2, 2012, the claimant would be entitled to benefits from that date forward.

DECISION:

The representative's October 23, 2012 decision (reference 01) is modified. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied from September 28 through December 1, 2012. The employer would have laid off the claimant due to a lack of work on December 2, 2012. Since the layoff was scheduled to begin on or about December 2, 2012, the claimant would be entitled to benefits from that date forward.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/css