

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RICHARD E WILLIAMSON
1718 – 46TH ST
DES MOINES IA 50310

BEE BEE CONCRETE INC
1550 VELVET AVE
LORIMOR IA 50149-8532

Appeal Number: 06A-UI-03219-JT
OC: 01/08/06 R: 02
Claimant: Respondent (1/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1)(a) – Voluntary Quit
871 IAC 24.26(4) – Intolerable or Detrimental Working Conditions

STATEMENT OF THE CASE:

Bee Bee Concrete filed a timely appeal from the March 9, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 12, 2006. Claimant Richard Williamson participated. Bookkeeper Sue Bates represented the employer. Exhibits One through Three were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Richard Williamson was employed by Bee Bee Concrete as a full-time foreman from February 3, 2004 until February 21, 2006, when he quit. Mr. Williamson quit after the third experience of not receiving his paycheck on time. Payday was supposed to be every Friday. The employer

thought that it had overpaid Mr. Williamson for a previous week's work and, therefore, owed Mr. Williamson less pay for the most recent week's work. However, the employer did not pay Mr. Williamson at all for the previous week's work until Mr. Williamson demanded to be paid. Only then did owner Bill Bates appear at the worksite and provide Mr. Williamson with a check drawn from Mr. Bates' personal account rather than a normal payroll check. During December 2005, Mr. Williamson had to demand a check before the employer paid him for his work. The employer had decided that since Mr. Williamson would be eligible for unemployment insurance benefits pursuant to a temporary layoff that the employer did not need to pay Mr. Williamson for the work he performed during the week in question. During the Christmas and/or New Year's holiday the previous year, the employer had gone on vacation out of state and forced Mr. Williamson and other employees to wait until the employer got back to be paid for work performed.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Williamson's voluntary quit was for good cause attributable to the employer. It does.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The evidence indicates irregularities and repeated delays in the employer's payment of Mr. Williamson for his work that a reasonable person would have found intolerable and that would have prompted a reasonable person to quit the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Williamson's quit was for good cause attributable to the employer. Accordingly, Mr. Williamson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Williamson.

Evidence presented at the hearing regarding the claimant's self-employment raised the issue of whether the claimant is able and available for employment as required by Iowa Code section 96.4(3). That issue was not properly before the administrative law judge. This matter is remanded to the fact-finder so that the issue of the claimant's availability may be addressed.

DECISION:

The Agency representative's decision dated March 9, 2006, reference 01, is affirmed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

REMAND:

This matter is remanded so that the fact-finder can address whether, in light of the claimant's self-employment, the claimant is available for employment as required by Iowa Code section 96.4(3).

jt/kkf