

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REX DUSENBERY

Claimant

APPEAL NO. 11A-UI-14203-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHARLES DRAKE & ASSOCIATES

Employer

OC: 09/25/11

Claimant: Respondent (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Charles Drake and Associates (Drake), filed an appeal from a decision dated October 18, 2011, reference 01. The decision allowed benefits to the claimant, Rex Dusenbery. After due notice was issued, a hearing was held by telephone conference call on December 6, 2011. The claimant participated on his own behalf. The employer participated by Owner Charles Drake.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Rex Dusenbery was employed by Drake from February 7 until June 17, 2011. During this time, he was assigned to Mercy properties as a grounds worker. Around June 6, 2011, he notified the Mercy supervisor the mower did not have a safety guard on it. The supervisor fixed his mower, but the claimant was aware the other three mowers had not had the shields replaced.

On June 16, 2011, the claimant was working in close proximity with other mowers and a rock was ejected from one and struck him in the temple, breaking his glasses. The claimant and supervisor agreed he did not need to go to the hospital for treatment and the company paid to replace his glasses. That same day, he reported the accident with Personnel Placement Coordinator Kendra and said he did not like the work and he felt the supervisor was a "jerk." He further said he was not sure he wanted to continue working and would let her know the next day.

On June 17, 2011, Kendra came to the work area to distribute the paychecks. At that time, Mr. Dusenbery showed her the mowers without the safety guards and told her he was quitting. That was the first time the employer knew of his concerns with the safety equipment on the client's mowers. If he had informed Drake earlier, the employer would have contacted the client company about the lack of safety equipment and asked that it be fixed.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had informed the onsite supervisor of the problem with the safety equipment and it was not fully addressed. As a result, Mr. Dusenbery was injured on the job. The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the supervisor of the lack of safety equipment but nothing was done. The claimant subsequently quit due to those conditions and the resulting injury. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's decision of October 18, 2011, reference 01, is affirmed. Rex Dusenbery is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw