

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAYCE W DRYDEN
Claimant

APPEAL NO: 13A-UI-00147-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMERALD GREEN LAWCARE INC
Employer

OC: 12/02/12
Claimant: Respondent (4)

Section 96.5-1 – Voluntary Leaving/Requalification

STATEMENT OF THE CASE:

Emerald Green Lawncare, Inc. (employer) appealed a representative's January 3, 2013 decision (reference 01) that concluded Jayce W. Dryden (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2013. The claimant participated in the hearing. Jeff Pickel appeared on the employer's behalf and presented testimony from one other witness, Andy Tank. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision modifying the representative's decision and allowing the claimant benefits.

ISSUE:

Did the claimant voluntarily quit, and if so is he disqualified from receiving unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on April 12, 2012. He worked full time as a laborer in the employer's lawn care and landscaping business. His last day of work was August 27, 2012.

On August 28 the claimant came to the workplace and reported that he would not be able to work that day because he needed to take his car in for possible repair. The employer was not pleased that the claimant would not be at work because there was work that needed to be done. The claimant felt that the employer was being unreasonable and unsympathetic about his need to get his car repaired, and determined not to report in for work after August 28. He was also concerned that a coworker might be using drugs while on duty and that the employer appeared not to be concerned. The employer had some concerns about the other employee, but did not have any solid evidence of drug use so that the employer could take any action regarding the other employee.

On September 4 the claimant came in to pick up his final paycheck and signed a voluntary resignation form. He listed as the reason for quitting that he could not work with the other employee who he believed was using drugs. The employer offered the claimant the opportunity to remain employed but to work with a different employee, but the claimant declined.

After leaving the employment with the employer the claimant sought and obtained other employment with a different employer. After September 4 through December 31, 2012 the claimant earned over \$4,000.00 with that other employer. The claimant established an unemployment insurance benefit year effective November 21, 2012 when he was laid off from that employer. His weekly benefit amount was calculated to be \$254.00.

REASONING AND CONCLUSIONS OF LAW:

Rule 871 IAC 24.25 provides that, 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 from whom the employee has separated. The claimant did express his intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would normally be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

Iowa Code § 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. However, the administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The representative's January 3, 2013 decision (reference 01) is modified in favor of the appellant. The claimant voluntarily left his employment without good cause attributable to the employer, but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css