

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD E BARBER**  
Claimant

**APPEAL NO. 13A-UI-13260-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MCCLAIN AND CO INC**  
Employer

**OC: 10/27/13**  
**Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Donald Barber filed a timely appeal from the November 27, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 19, 2013. Mr. Barber participated personally and was represented by attorney Benjamin Roth. Glenn Dunville represented the employer and presented additional testimony through Marilyn Gandy. Exhibits A and B were received into evidence.

**ISSUE:**

Whether Mr. Barber separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a bridge inspection and repair contractor. Donald Barber was employed by McClain and Company, Inc., as a full-time commercial truck driver from April 2013 and last performed work for the employer on July 8, 2013. Mr. Barber's duties involved pulling tankers, hauling heavy equipment, and operating a dump truck. Ken Huntley, Superintendent, was Mr. Barber's immediate supervisor. Mr. Barber's status as a commercial truck driver subjected him to U.S. Department of Transportation regulations regarding mandatory post-accident drug testing.

On July 8, 2013, Mr. Barber was operating the employer's dump truck at a construction site when the dump truck flipped onto its side. It was the driver's side of the vehicle that came in contact with the ground. The accident damaged the driver's side door and fender. The cost of repair was \$1,200.00. Mr. Barber was able to exit the dump truck cab by climbing up through the passenger door and jumping to the ground. Mr. Huntley and Glenn Dunville, Construction Manager, were present when the dump truck went on its side. Mr. Dunville and another employee held the passenger door open so that Mr. Barber could exit the cab. Mr. Barber landed on his feet when he jumped to the ground. Mr. Barber denied being injured. Mr. Dunville told Mr. Barber that he would need to go to a hospital to be checked out and to submit to post-accident drug testing. Mr. Barber said he was not going to do that. Mr. Barber became agitated. Mr. Dunville told Mr. Barber that he was not in trouble in connection with the

dump truck accident, but that he had to submit to a drug test or it would be like he had quit. Mr. Barber replied, "Fuck you, I'm not doing anything for you or McClain." Mr. Barber then got into company truck that he and other members of the crew had ridden to work. Mr. Dunville directed Mr. Huntley to talk to Mr. Barber to convey that he was not in trouble for the accident, but that he had to take the drug test or the employer would deem him to have quit the employment.

The crew had been staying at the Super 8 in Indianola. Across the street from the motel was a medical clinic. Mr. Huntley drove Mr. Barber and another employee who had been operating another vehicle at the time of the dump truck rollover to the medical clinic for drug testing. The other employee entered the clinic to submit to drug testing. Mr. Barber refused to submit to drug testing and insisted that Mr. Huntley take him to the motel. Once Mr. Barber was at the motel, he went to his room, locked the door, and would not admit anyone to the room. Mr. Barber would not talk to Mr. Huntley and another worker who knocked on the door in an effort to convince Mr. Barber to go to the medical clinic.

The next day, Mr. Barber did not report for work. Later that day, Mr. Huntley saw Mr. Barber exit the motel, get into a vehicle, and leave. Mr. Barber had arranged for a friend from the Waterloo area to come collect him from the motel and transport him back to the Waterloo area. That was the last the employer heard of Mr. Barber until September, when the employer learned that Mr. Barber had presented at a Waterloo hospital with a purported work injury. Mr. Barber was seen at Allen Occupational Health on September 5, 2013 for neck and arm issues. The health provider referred Mr. Barber for physical therapy three times per week, restricted him to lifting no more than 25 pounds and restricted him from operating an industrial vehicle. The health care provider released Mr. Barber to return to light-duty work as of September 5, 2013 and directed Mr. Barber to return for a follow up appointment on September 13, 2013. On October 3, 2013, the employer's worker's compensation carrier issued a \$484.23 payment to Mr. Barber's attorney for one week of total temporary disability (TTD) worker's compensation benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

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 weight of the evidence in the record establishes that Mr. Barber voluntarily quit the employment effective July 8, 2013 in lieu of submitting to federally-mandated post-accident drug testing on that date. Rather than comply with the employer's request that he go to a nearby

medical clinic for medical evaluation and to submit to the drug testing, Mr. Barber isolated himself in his room on the day of the accident and then had a friend collect him the next day and transport him back to the Waterloo area. There was a medical clinic close to the motel in Indianola where Mr. Barber had been staying. The weight of the evidence fails to support Mr. Barber's assertion that he had to return to Waterloo to obtain medical treatment.

Mr. Barber voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Barber is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

**DECISION:**

The Agency representatives November 27, 2013, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs