

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JIM F KRUG**

Claimant

**APPEAL NO. 11A-UI-06521-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY CONCRETE COMPANY INC**

Employer

**OC: 12/12/10**

**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Jim Krug (claimant) appealed a representative's May 6, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Kelly Concrete Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 13, 2011. The claimant participated personally. The employer participated by Amber Koppenhaver, 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 May 5, 2008, as a full-time laborer. He worked through March 30, 2011. At that time the claimant resigned to take other employment with Jeff McAllister Concrete. Continued work was available with the employer had the claimant not resigned. He continues to be a full-time laborer at his new job.

**REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits after his separation from work.

Iowa Code § 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

The claimant left his position with the employer to work for another employer. When an employee quits work to take other employment, he is not disqualified from receiving unemployment insurance benefits. The claimant quit work to take other employment. He voluntarily quit without good cause attributable to the employer. Benefits are allowed because the claimant left to take other employment. The employer will not be charged.

For the following reasons the administrative law judge concludes the claimant is not qualified to receive unemployment insurance benefits.

871 IAC 24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant is not qualified to receive unemployment insurance benefits as of April 4, 2011, because he is working full-time for his new employer. The claimant is working to such an extent as to remove him from the work force. The claimant is disqualified from receiving unemployment insurance benefits because he was not available for work.

**DECISION:**

The representative's May 6, 2011 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits because he quit to take other employment. The employer will not be charged. The claimant is disqualified from receiving unemployment insurance benefits as of April 4, 2011, because he is not available for work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs