IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANDREW L CHALUPSKY
Claimant

BOWKER MECHANICAL CONTRACTORS LLC
Employer

APPEAL NO. 09A-UI-15301-VST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/23/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 2, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 12, 2009. Claimant participated. Employer participated by Bob Yoke, safety director, and Susan Reid, payroll/human resources. The record consists of the testimony of Andrew Chalupsky; the testimony of Bob Yoke; and the testimony of Susan Reid.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired as a journeyman plumber/pipefitter out of Local 125 of the Plumbers/Pipefitters Union in Cedar Rapids, Iowa. His date of hire was May 28, 2001. The claimant had a work related injury on March 16, 2005, to his shoulder. This injury required two different surgeries, first in Cedar Rapids, Iowa, and then in Iowa City, Iowa. The employer provided light duty work to the claimant when his physicians permitted him to return to work. Since his last surgery, the claimant has been restricted from doing overhead work.

A restriction of no overhead work does not permit the claimant to do the duties of a journeyman plumber/pipefitter. The employer provided light duty work to include welding at waist level in the fabrication shop and some janitorial duties. The claimant was paid the wages he would have received as a journeyman plumber/pipefitter. The claimant did not like the work. He felt that he was trained to be a plumber/pipefitter and did not like some of the janitorial work he was asked to do as part of his light duty assignment. His hours at work were sporadic due to attending therapy and going out of town to care for his father, who was seriously ill. The claimant's last day of work was July 8, 2008. After that day, he stopped showing up for work and did not contact the employer about coming to work.

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.

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.

The evidence in this case established that it was the claimant who initiated the separation of employment. He did not want to be in an employer/employee relationship with the employer because he did not like some of the duties he was given while on light duty. The claimant testified he was trained to be a plumber/pipefitter and apparently felt that some of the things he was being asked to do on light duty, such as sweep the floor, were beneath him. The claimant admitted, however, that his restriction of no overhead lifting prevented him from working as a plumber/pipefitter. The claimant decided to stop coming to work and did not contact his employer about his decision. The employer had work available for the claimant at the time he quit his job.

Although the claimant did not like his light duty work and may have had a good personal reason for quitting his job, his reason does not constitute good cause attributable to the employer. There is no evidence of a hostile or intolerable working condition or that the employer assigned duties to him that were outside of his physical restrictions. Rather the employer was endeavoring to provide continuing employment to the claimant while he recovered from his injury. Since the claimant quit without good cause attributable to the employer, benefits are denied.

DECISION:

The decision of the representative dated October 2, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs