

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN G KETTER

Claimant

APPEAL NO. 10A-UI-09997-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VIETH CONSTRUCTION CORP

Employer

OC: 01/03/10

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Vieth Construction Corporation filed a timely appeal from a representative's decision dated July 8, 2010, reference 02, which held the claimant eligible to receive unemployment insurance benefits beginning July 4, 2010 finding the claimant able and available for employment listing Vieth Construction Corporation as the respondent employer. After due notice, a telephone hearing was held on August 31, 2010. The claimant participated personally. The employer participated by Colleen Lott, Accountant.

ISSUE:

The issue is whether Vieth Construction is potentially liable for unemployment insurance benefits paid after the claimant voluntarily left employment with Vieth Construction Corporation and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: John Ketter was employed by Vieth Construction Corporation from November 23, 2002 until March 6, 2010 when he voluntarily quit employment for the sole purpose of accepting other or better employment. Mr. Ketter was employed as a full-time foreman. Mr. Ketter accepted new employment with the Stickfort Construction Company and has performed services in the new employment.

It appears that at a later date Mr. Ketter took time away from his new employment for personal reasons but subsequently re-established his availability for work by returning and making himself available to perform services for his new employer.

It is the claimant's position that any overpayment of unemployment insurance benefits based upon a previous period of non-availability has been recouped or repaid.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge finds that any benefits relating wage credits earned with Vieth Construction Corporation shall be charged to the Unemployment Compensation Fund and Vieth Construction Corporation shall not be liable for unemployment insurance benefits paid based upon the claimant's voluntarily leaving employment for the sole purpose of accepting other or better employment which Mr. Ketter did accept and performed services in the new employment.

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.

Iowa Code section 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.

Because Mr. Ketter left employment with Vieth Construction Corporation in good faith for the sole purpose of accepting other or better employment which was accepted and Mr. Ketter performed services for the new employer, he shall not be disqualified for the receipt of unemployment insurance benefits for accepting other or better employment.

DECISION:

The representative's decision dated July 8, 2010, reference 02, finding the claimant able and available for work but identifying Vieth Construction Corporation as a respondent employer is reversed. The claimant voluntarily left employment without good cause attributable to this employer and is not disqualified as his sole purpose was to accept other or better employment.

Benefits relating to wage credits earned with Vieth Construction Corporation shall be charged to the Unemployment Compensation Fund, providing the claimant meets other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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