

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MYRON G GREEN**

Claimant

**APPEAL NO. 10A-UI-12701-A**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF AMES**

Employer

**OC: 07/18/10**

**Claimant: Respondent (5)**

Section 96.5-1 – Voluntary Quit

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

City of Ames filed a timely appeal from an unemployment insurance decision dated September 2, 2010, reference 01, that allowed benefits to Myron G. Green upon a finding that he had been discharged from employment under circumstances not constituting misconduct. After due notice was issued, a hearing was held in Des Moines, Iowa on October 28, 2010 with Mr. Green participating. Assistant City Attorney Judy Parks appeared on behalf of the employer. Electric Services Director Donald Kom and Risk and Benefits Administrator Inta Bingham testified. Employer Exhibits One through Six and Claimant Exhibits A through E were admitted into evidence.

**ISSUES:**

Did the claimant leave work with good cause attributable to the employer?

Was the claimant discharged for misconduct?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Myron G. Green began working for the City of Ames on April 24, 1978. The employment ended on or about May 10, 2010. He last worked full time as a foreman in the electric department.

Mr. Green had been injured on the job in 2005 and 2008 and suffered an aggravating injury on July 31, 2009. As the result of those injuries, he had a permanent restriction that prohibited him from climbing poles. Prior to April 2010, the City had accommodated his restriction. Electric Services Director Donald Kom determined that the City could no longer make that accommodation for a foreman. He proposed that Mr. Green accept a voluntary demotion to the position of service worker, a job with a lower rate of pay but with duties that did not often require climbing. Mr. Green declined the demotion. During negotiations concerning the separation from employment, the parties entered into a settlement on the permanent partial disability

related to the earlier workers' compensation claims. The employer also required that Mr. Green sign a global release in return for the \$180,000.00 settlement.

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

The question is whether the separation was an event that disqualifies Mr. Green from receiving unemployment insurance benefits. For the reasons which follow, the administrative law judge concludes that it does not.

The parties agree that Mr. Green was not discharged due to misconduct as that term is used for unemployment insurance purposes. Mr. Green agrees that he could have remained employed by accepting the lower paying position that might require climbing. Separation under these circumstances is better characterized as a voluntary quit.

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.

Resignation because of a substantial change in the conditions of employment is considered to be with good cause attributable to the employer. See 871 IAC 24.26(1). The administrative law judge notes that the change in terms of employment being imposed by the employer would have resulted in a loss of pay. It also introduced an element of uncertainty in that the employer had already indicated that it could not accommodate Mr. Green's no climbing restriction although he had not been required to climb since 2005, while climbing was a potential activity in the job description of the position being offered him. In the case Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Supreme Court of Iowa ruled in favor of the claimant who had resigned rather than accept a reduction in pay. The Court also noted that the agency cannot consider the employer's rationale in proposing the change, only the impact of the change on the claimant. Noting the reduction in pay and the uncertainty caused by the City's refusal to continue accommodating Mr. Green's medical restriction, the administrative law judge concludes that Mr. Green had good cause attributable to the employer to sever the employment relationship.

It is clear from the evidence in the record that the employment would have ended regardless of the workers' compensation settlement since Mr. Green declined the demotion. The administrative law judge views the separation settlement as being in the nature of negotiations over a severance package, a result of the separation, not a cause of the separation. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated September 2, 2010, reference 01, is modified to the extent that it is characterized as a voluntary quit with good cause attributable to the employer rather than a discharge under circumstances not constituting misconduct. This modification does not change eligibility for benefits. The claimant is entitled receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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