

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEXTER D GREENWAY
Claimant

APPEAL NO. 10A-UI-04164-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MODERN BUILDERS INC
Employer

OC: 12/27/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 25, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 22, 2010. The claimant did provide a telephone number at which he could be reached for the hearing. The administrative law judge called that number and the claimant answered. He was informed that the call would be placed on hold while the administrative law judge called the employer. When the administrative law judge tried to connect the parties, there was a click on the line and the claimant was not there. Several calls were placed to the claimant in order to connect him to the call. Voice mail picked up. Messages were left for the claimant to call. He did not call to participate in the hearing. The employer participated by Rusty Stensland, vice president, and Tami Mauer, office manager. The record consists of the testimony of Rusty Stensland; the testimony of Tami Mauer; and Employer's Exhibits 1-3.

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 employer is a general contractor specializing in metal roofs and buildings. The claimant was hired on September 8, 2008, as a general laborer. On November 8, 2009, he suffered a stroke while at home. He informed his employer that he would not be able to come to work. The claimant's stroke was not work related.

On December 27, 2009, Rusty Stensland, saw the claimant at a casino. The claimant informed Mr. Stensland that he would not be able to come back to work due to "blind spots." Upon receipt of that information, the employer determined the claimant to have voluntarily quit effective December 27, 2009.

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.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

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 suffered a stroke and the persistent symptoms made it impossible for him to return to work. Iowa law states that if a claimant is unable to return to work because of a non-work-related condition, he is presumed to have voluntarily quit without good cause attributable to the employer. The claimant did not participate in the hearing and therefore the able and available issue could not be addressed.

DECISION:

The decision of the representative dated February 25, 2010, 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs