

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICK L FOY**  
Claimant

**APPEAL NO. 11A-UI-11671-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**USA STAFFING INC**  
**LABOR WORLD OF IOWA**  
Employer

**OC: 07/17/11**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 29, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 28, 2011. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

**ISSUE:**

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a painter/welder assigned at MD Products and was separated from employment on June 3, 2011. Instead of painting and welding they assigned him to sandblasting without appropriate training, operable equipment, or supervision. He left and immediately went to the employer seeking another assignment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

871 IAC 24.26(2) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(2) The claimant left due to unsafe working conditions.

A notice of an intent to quit had been required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871 IAC 24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871 IAC 24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871 IAC 24.26(6)(b) but not 871 IAC 24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The misrepresented job duties, change in job duties, lack of training, lack of supervision, and inoperable equipment created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed.

#### **DECISION:**

The August 29, 2011 (reference 01) decision is reversed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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