

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT L CURRY**  
Claimant

**APPEAL NO. 12A-UI-10433-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR VALLEY AUTO GLASS INC**  
Employer

**OC: 07/29/12**  
**Claimant: Respondent (5)**

Section 96.5(2)(a) – Involuntary Separation

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 27, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 25, 2012. Claimant Robert Curry participated. James Curry, president, represented the employer. Exhibits One through Four were received into evidence.

**ISSUE:**

Whether Robert Curry separated from Cedar Valley Auto Glass, Inc. for reason that would disqualify him for unemployment insurance benefits. The administrative law judge concludes that Robert Curry involuntarily separated from the employment at the insistence of James Curry, who no longer wanted to work with his brother and who had concluded that the business could no longer support both of them.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Curry and James Curry are brothers who, with a third person, Chris Snyder, established an auto glass installation company, Cedar Valley Auto Glass, Inc. in 2010. All three had previously worked for the same employer. Robert Curry had been the manager for the previous employer and brought with him decades of related management experience. James Curry and Mr. Snyder had been glass installers. When the new business was established, Robert Curry and James Curry were each granted 45 percent ownership and Mr. Snyder was granted 10 percent ownership. James Curry was designated President and Robert Curry was Designated Vice President. Robert Curry initially managed the business. All three owners also installed auto glass. Within a year of the business opening, Robert Curry transitioned to part-time status.

Over time, the interpersonal relationship between James Curry and Robert Curry soured. There were many reasons for this. The brothers had gone into the joint venture with the understanding that Robert Curry would at some point in foreseeable future be retiring. James Curry wanted his brother to provide a definite retirement date, but Robert Curry declined to do so. In the summer of 2011, Robert Curry was gone from work in connection with a carpal tunnel diagnosis. When Robert Curry returned in early September, James Curry asserted the business had made a lot of money while Robert was gone. The business had hired another installer to fill in. After Robert Curry's return, James Curry began to assert that the business was not making any money. James Curry had

unilaterally installed his spouse as the de facto office manager. James Curry's spouse interfered with Robert Curry's access to monthly business records. Over time, James Curry and his spouse edged Robert Curry out of managing the business. The interpersonal tension between the brothers brought matters to a point where Robert Curry stopped talking to James Curry.

At the end of March 2012, James Curry demanded that Robert Curry either buy him out or provide a definite retirement date. James Curry told Robert Curry that he could not stand working with him. Robert Curry had intended to continue to work in the business for another year. Because Robert Curry was unwilling to buy James Curry out, James Curry redoubled his demand that Robert Curry leave the business. At minimum, James Curry wanted his brother to relinquish his ownership interest, moves to a sales representative position, and take a pay cut. James Curry contacted the business's attorney and had the business's attorney draft a buy-out agreement with terms dictated by James Curry. James Curry subsequently presented Robert Curry and Chris Snyder with the proposed buyout agreement. The proposed agreement increased James Curry's ownership interest to 75 percent, left Mr. Snyder's interest at 10 percent, and added James Curry's spouse, Gina Curry, as a 15 percent owner. Robert Curry requested a \$27,000.00 buyout, which James Curry rejected. The brothers settled on a \$20,000.00 buyout amount. Under the terms of the agreement, Robert Curry agreed to leave on May 31, 2012. James Curry acted unilaterally with the business assets to secure the financing needed to buy out Robert Curry.

On May 16, 2012, the parties executed the buyout agreement. On May 31, 2012, Robert Curry separated from the business.

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

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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.

While this case presents some unusual facts, the bottom line is that the employer, in this case James Curry, initiated the separation from the employment. It was James Curry who decided that it was unacceptable for Robert Curry to continue as manager/installer. The weight of the evidence indicates that but for James Curry's insistence that he leave—or at least surrender his ownership interest, change job, and take a pay cut—Robert Curry would have continued in the employment. The separation was not a voluntary quit. The separation does not fall within the category of "other separations," because a forced retirement is not the sort of retirement contemplated in the rule. Thus, the separation was either a layoff or a discharge. To the extent that the separation might fit the definition of a discharge, it was not based on any misconduct on the part of Robert Curry. A discharge must be based on misconduct in connection with the employment in order to disqualify a claimant for unemployment insurance benefits. See Iowa Code section 96.5(2)(a). The separation at issue was based on what became a personality conflict between the brothers, based largely on James Curry's desire to control the business to the exclusion of Robert Curry. To the extent that the separation might fit the definition of a layoff, a conclusion that Robert Curry was laid off would be in keeping with James Curry's demand that Robert Curry leave, or at least surrender ownership and accept substantially changed conditions of employment, based on James Curry's conclusion that the business could no longer support both brothers.

Robert Curry involuntarily separated from the employer for no disqualifying reason. Robert Curry is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

The administrative law judge notes the employer's assertion that Robert Curry waived his right to unemployment insurance benefits as part of the buyout agreement. Any such purported waiver of rights is void under Iowa Code section 96.15(1).

**DECISION:**

The Agency representative's August 27, 2012, reference 01, decision is affirmed. The claimant involuntarily separated from the employment for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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