

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN E CARMER
Claimant

APPEAL NO. 12A-UI-02317-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMSEN EQUIPMENT INC
Employer

OC: -01/15/12
Claimant: Respondent (4)

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 28, 2012, reference 01, decision that allowed benefits to the claimant and that indicated the employer's account could be assessed for benefits. A hearing was set for March 22, 2011 and the parties were properly notified. Both parties provided a telephone number for the hearing. After reviewing the administrative file, the administrative law judge concludes that a hearing is not necessary to grant the employer the request relief without prejudice to the claimant. The administrative law judge enters the following decision based on the content of the administrative file.

ISSUES:

Whether Mr. Carmer separated from Thomsen Equipment, Inc., for the sole purpose of accepting other employment and did in fact perform work for the new employer.

Whether Thomsen Equipment, Inc., may be relieved of charges for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Allen Carmer performed worked as a full-time laborer for Thomsen Equipment, Inc., during a period when he was laid off from employer Schmitz Construction, employer account number 150126. Mr. Carmer started working for Thomsen Equipment on July 27, 2011 and last performed work for Thomsen Equipment on August 20, 2011. At that time, Mr. Carmer voluntarily quit the employment at Thomsen Equipment because he had been recalled to his employment at Schmitz Construction.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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.

[Emphasis added.]

The administrative law judge must follow the plain language of the statute.

Mr. Carmer voluntarily quit the employment at Thomsen Equipment without good cause attributable to Thomsen Equipment. Mr. Carmer quit that employment for the sole purpose of returning to his employment at Schmitz Construction and then performed work for Schmitz Construction. The separation from Thomsen Equipment will not disqualify Mr. Carmer for unemployment insurance benefits. Mr. Carmer is eligible for benefits, provided he is otherwise eligible. Thomsen Equipment will not be charged for benefits paid to Mr. Carmer. Benefits relating to wage credits Mr. Carmer earned through the employment with Thomsen Equipment will be charged to the unemployment compensation fund.

DECISION:

The Agency representative's February 28, 2012, reference 01, decision is modified as follows. The claimant voluntarily quit without good cause attributable to the employer for the sole purpose of accepting other employment and performed work in the new employment. The claimant is eligible for benefits, provided he is otherwise eligible. Thomsen Equipment will not be charged for benefits paid to the claimant. Benefits relating to wage credits the claimant earned through the employment with Thomsen Equipment will be charged to the unemployment compensation fund.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw