

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORY M ELLIOTT**  
Claimant

**APPEAL NO. 10A-UI-14289-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALL IN A DAY LLC**  
Employer

**OC: 08/22/10**  
**Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated October 13, 2010, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 29, 2010. Claimant participated. Carla Elliot was available as a witness for the claimant. Employer participated by Nicole Postello, Human Resources. The record consists of the testimony of Nicole Postello and the testimony of Cory Elliot.

**ISSUE:**

Whether the claimant was separated from his employment for any disqualifying reason.

**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 temporary employment agency. The claimant accepted an assignment from the employer on September 25, 2009, to work as a carpenter for Connelly Tiehen. The claimant was still on this assignment when he was involved in an automobile accident on March 23, 2010. This accident was not work related. The claimant suffered a broken neck and was unable to work as a result. The claimant's mother notified the employer on March 24, 2010, that her son had been in an accident. The claimant also contacted the employer and was informed that he could return to his job when he had sufficiently recovered from his accident.

On or about June 3, 2010, the claimant asked the employer if he could return to work. An employee named Jennifer told the claimant that the assignment had ended and nothing else was available.

## 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.

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 employer's position is that the claimant's inability to work following his automobile accident constitutes a voluntary quit on the part of the claimant. The evidence did establish that there was a period of time following his accident when the claimant was physically unable to work. However, there is no evidence that the claimant quit his job. The claimant did nothing to intentionally sever the employment relationship. The claimant wanted to go back to work once he recovered. He was given at least some assurance that he would be able to do so. When he was able to return to work, he was told that his assignment had ended. No other assignments were offered to the claimant. The employer, therefore, initiated the separation of employment, not the claimant.

Since the claimant did not voluntarily quit his job and there is no evidence of misconduct on the part of the claimant, benefits are allowed if the claimant is otherwise eligible.

## DECISION:

The decision of the representative dated October 13, 2010, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/css