

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTIAN A WAGNER
Claimant

APPEAL NO. 10A-UI-04726-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACKHAWK FOUNDRY & MACHINE CO
Employer

OC: 02/14/10
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 17, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 10, 2010. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of Christian Wagner.

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 claimant was in the charge of the sand department for the employer. The employer was going to go out of business and the workload was declining. The claimant was asked to take a “voluntary layoff” so that other employees could be kept on for a while and retain their performance bonuses. Although the offer was phrased in terms of a voluntary layoff, the claimant had no choice but to accept as he would not have been retained as an employee had he declined. The effective date of his resignation was February 14, 2010.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(21) 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:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The evidence in this case established that it was the employer, not the claimant, who initiated the separation of employment. The employer was in the process of winding down its business and was having difficulty keeping all employees busy. The claimant was asked by his supervisor to take a "voluntary layoff" so that some other employees could stay on for a while longer and get their performance bonuses. The claimant understood that if he did not agree to go on layoff, he would have been laid off or terminated. The claimant's resignation was not voluntary and is more akin to a discharge. There is no showing of misconduct on the part of the claimant. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 17, 2010, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs