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

JEFFREY R MAICHIN
Claimant

APPEAL NO. 12A-UI-08649-JTT

ADMINISTRATIVE LAW JUDGE DECISION

SECURITY INDUSTRIES
Employer

OC: 06/10/12
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jeffrey Maichin filed a timely appeal from the July 13, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 13, 2012. Mr. Maichin participated and presented additional testimony through Mike Bletso. Holly Cooper, project director, represented the employer. The hearing in this matter was consolidated with the hearing in appeal number 12A-UI-08650-JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits paid to the claimant.

ISSUE:

Whether Mr. Maichin separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Security Industries is a contractor performing work on the Iowa State Penitentiary at Fort Madison. Jeffrey Maichin had worked on other projects for other contractors at that same facility before entering into a dubious agreement with a friend, Securities Industries Foreman Scott Liptik, to be hired on for a day or two and then be "laid off," so that Mr. Maichin could return to his home state of Missouri and assert his eligibility for unemployment insurance benefits. Securities Industries Project Director Holly Cooper was the senior Securities Industries employee with overall responsibility for work at the Fort Madison jobsite. Mr. Liptik hired Mr. Maichin to perform work full-time on the Fort Madison project and did so with the approval of his superiors.

Mr. Maichin is a union iron worker and belongs to a Local in Missouri. The dealings and relationship between Mr. Maichin and the employer are governed by the collective bargaining agreement between employers and the iron workers' Local with authority over work on the Fort Madison project. As a career iron worker, Mr. Maichin was aware that the collective bargaining agreement governed his employment. Mr. Maichin was aware that if the employer did in fact lay him off, the employer was required to pay him that same day for the work he had

performed. In addition to being aware of the Local's authority over his employment, Mr. Maichin had also received a copy of the employer's policies.

Mr. Maichin worked for a day for Security Industries and then met Mr. Liptik off-site to collect a cursory handwritten note that said he had been laid off due to lack of work. The note is dated June 7, 2012. Mr. Maichin knew at the time he obtained the note that the "lay-off" was bogus. The employer continued to have work for Mr. Maichin on the Fort Madison project. The work the employer had for Mr. Maichin was not in jeopardy. No local iron workers were waiting in the wings to take Mr. Maichin's spot. The union Local and local steel workers were not pressuring Mr. Maichin to leave the position he had just started on June 6. As a non-local "boomer," Mr. Maichin also had rights under the collective bargaining agreement that allowed him to stay in the employment if he desired to do so. Mr. Maichin brought no concerns to the attention of Security Industries management prior to leaving the employment the day after he started.

The employer subsequently discharged Foreman Scott Liptik for dishonesty and inappropriately exceeding his authority.

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.

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 weight of the evidence indicates that Mr. Maichin's brief employment—one or two days— and his separation from the employment were all based on a conspiracy between Mr. Maichin and his friend, Securities Industries Foreman Scott Liptik. Together they worked out a plan for Mr. Maichin to work for a day and then be "laid off" so that Mr. Maichin could return home to Missouri and establish a claim for unemployment insurance benefits. In other words, Mr. Maichin conspired with Mr. Liptik to perpetrate a fraud on Security Industries and Iowa Workforce Development. The weight of the evidence indicates that Mr. Maichin was hired for full-time work until the Security Industries project at Fort Madison ended. The weight of the evidence indicates that Mr. Maichin voluntarily quit the employment the day after he started and did that so that he could return to Missouri.

The voluntary quit was for personal reasons and not for good cause attributable to the employer. Accordingly, Mr. Maichin is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Maichin.

DECISION:

The Agency representative's July 13, 2012, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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