

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICK L LOPEZ**

Claimant

**APPEAL NO. 10A-UI-04171-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLACKHAWK FOUNDRY & MACHINE CO**

Employer

**OC: 01/31/10**

**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 12, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 22, 2010. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Rick Lopez.

**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 witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked for the employer as a yard man for approximately three years from 2006 through February 12, 2009. He did a variety of tasks such as dumping slag and mud and loading raw materials.

On or about February 10, 2009, the claimant was asked to do a job called “blowing out boxes.” This job carried some risk from burns due to flying sparks. The claimant did suffer a burn on his left upper chest. A spark landed on his shirt pocket and burned some cigarettes he had in the pocket. The burn took approximately two weeks to heal. The claimant did not feel he had been given the proper safety equipment to do the job.

The claimant was asked to do this job again on February 12, 2009. He told his manager that he was not going to do the job without proper safety equipment. He was given a sleeve and a pair of sunglasses. When the claimant had done this job in the past he had been given “full gear”, which included a full face shield and a welder’s coat. When he asked for full gear, he was informed that the employer did not have the money for proper gear. The claimant was asked if he was refusing to do the job. The claimant did not reply. The claimant was then told that he was “done.”

## 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.

871 IAC 24.26(2) 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:

(2) The claimant left due to unsafe working conditions.

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 first issue to be determined is the character of the claimant's separation of employment. Although the employer did not participate in the hearing, a reasonable inference from the claimant's testimony is that the claimant refused to do the "blowing out boxes" job and therefore, in essence, abandoned his job or refused to continue working. The claimant's un rebutted testimony is that he did not want to do the job unless he was given proper safety equipment to do the job. The claimant's concern is reasonable given what had happened to him two days earlier. He had sustained a burn when a spark landed on his shirt. The claimant was told that the employer did not have the money to provide proper gear as had been done in the past.

The administrative law judge concludes that the claimant did not voluntarily quit his job and even if the evidence can be viewed that way, the claimant left for good cause attributable to the employer. The employer's financial inability to provide proper safety gear does not discharge the employer's responsibility to provide a safe workplace. The employer elected to terminate the claimant. There is no evidence of misconduct that would disqualify the claimant from receiving benefits. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated March 12, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/pjs