

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL MENDOZA
Claimant

APPEAL NO. 13A-UI-04464-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVIS JD STEEL LLC
Employer

OC: 01/06/13
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Daniel Mendoza filed a timely appeal from the April 2, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 21, 2013. Mr. Mendoza participated and presented additional testimony through Felix Mendoza. Bev Hamilton represented the employer.

ISSUE:

Whether the claimant separated from the employment for 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: Daniel Mendoza was employed by Davis JD Steel, L.L.C., as a full-time journey man ironworker from July 19, 2012 until October 10, 2012, when he voluntarily quit to return to California. While he was employed with Davis JD Steel, Mr. Mendoza worked primarily on a construction project at Mary Greeley Medical Center in Ames. He also performed work on a project in Farmingville, Iowa. Mr. Mendoza's supervisors were foreman Randy Jorgenson and Superintendent Russell Andrews, senior supervisor for the employer's work in Iowa. Mr. Mendoza's family resided in Palmdale, California and Mr. Mendoza left his family in California while he worked for the employer in Iowa Daniel Mendoza left the employment after his wife notified him that their 17-year-old daughter had run away from home. Daniel Mendoza did not notify the employer that he was leaving or why he was leaving.

Mr. Mendoza's brother, Felix Mendoza, also worked for the employer. Felix Mendoza mentioned to Mr. Jorgensen Daniel Mendoza's need to return to California. Felix Mendoza left the employment at the same time Daniel Mendoza left, but left for different reasons. Felix Mendoza had accepted work in the state of Washington and traveled there for that reason. Felix Mendoza did not return to the employer after he quit on October 10, 2012 to return to California. After Felix Mendoza had been working in Washington for three weeks, in mid November 2012, Felix Mendoza engaged in discussion with Mr. Jorgensen about possibly returning to work in Iowa. The discussion broke down over the issue of pay. Daniel Mendoza was not involved in the

discussion with the employer. Daniel Mendoza made no contact with the employer about returning to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-f 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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

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 evidence in the record establishes that Daniel Mendoza voluntarily quit on October 10, 2012 for compelling personal reasons but without good cause attributable to the employer. Daniel Mendoza left the employment to return to California to assist with locating his daughter. Daniel Mendoza then never returned to the employer to offer his services. Daniel Mendoza was away from the employment for about a month before his brother, Felix Mendoza, spoke to the employer about returning to the employment. Because Daniel Mendoza's voluntarily quit was without good cause attributable to the employer, Daniel Mendoza 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 Daniel Mendoza.

DECISION:

The agency representative's April 2, 2013, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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