

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICHARD M EMERY
Claimant

4053-AMES
Employer

APPEAL 15A-UI-04397-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/22/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.27 – Voluntary Leaving Part Time Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 8, 2015, (reference 11) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on May 12, 2015. The claimant participated. The employer participated through Kyra Knuth.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

The claimant last performed work for the employer on March 31, 2015, during a “working interview” for an assignment at Lumber Specialists. He was offered a full-time position, to continue working during the first shift for \$12.50 per hour. The claimant initially accepted the position and would have continued working, but he quit later in the day. The claimant resigned because he determined he would not be physically able to perform the labor required, he didn’t want to lose his health care and believed it would push his wages over so he no longer qualified for his current healthcare plan, and because he already had another position that he had been working with Dublin Bay. Had the claimant not resigned, continued work was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant’s separation from the employment was without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(27) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

Iowa Admin. Code r. 871-24.23(22), (16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant resigned and did not continue working for the employer because he did not want to do manual labor and wanted to continue working at his other job. In addition, the claimant determined additional employment would increase his wages so that he would not qualify for other benefits such as his reduced cost health care. While the claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The April 8, 2015, (reference 11) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs