

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID B BOARD
Claimant

APPEAL NO. 09A-UCX-00028-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JSS CONSTRUCTION
Employer

**Original Claim: 10/25/09
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

David Board (claimant) appealed a representative's November 13, 2009 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with JSS Construction (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 29, 2009. The claimant participated personally. The employer participated by Joseph Sieczka, Owner, and Michael Sieczka, Superintendent.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 11, 2009, as a full-time laborer. The claimant signed a company policy indicating that the employer agreed to pay workers on Fridays. The claimant's first paycheck was due on September 25, 2009. The employer handed the claimant a check and told him not to cash it because there were not sufficient funds. The employer gave the claimant permission to cash the check on October 3, 2009. The claimant cashed the check and it was returned for insufficient funds. The claimant incurred overdraft fees. After the claimant called the employer many times, the employer appeared at the claimant's bank on October 6, 2009, and the claimant received his funds.

The claimant told the employer on September 30, 2009, that he would stop appearing for work until he was paid all wages due and owing. On October 2, 2009, the claimant was due a second paycheck. The funds for the October 2, 2009, check were not available to the claimant until November 3, 2009. The claimant did not return to work for the employer, due to the non-payment of wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit with good cause attributable to the employer.

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.

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's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving and quit work. In the absence of agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 140 Nebraska 889, 2 N.W.2d 332 (1942).

When an employee quits work because the employer did not pay wages when they were due without an agreement to the contrary, his leaving is with good cause attributable to the employer. The claimant left work because he was not paid his wages when they were due and there was no agreement to the contrary. His leaving was with good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's November 13, 2009 decision (reference 02) is reversed. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw