

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NATHAN D DILLON**  
Claimant

**APPEAL NO. 09A-UI-10697-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALL SEASONS HEATING & COOLING INC**  
Employer

**Original Claim: 06/14/09  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated July 21, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 13, 2009, in Dubuque, Iowa. The claimant participated. The claimant was represented by Mark Sullivan, attorney at law. The employer participated by Joe Metille, president, and Nancy Mueller, office manager. The record consists of the testimony of Joe Metille, the testimony of Nancy Mueller, the testimony of Nathan Dillon, Claimant's Exhibit A, and Employer's Exhibit 1.

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

The employer in this case provides installation and removal of heating and air conditioning units and systems. The claimant was hired on June 16, 2008, as a shop/delivery person. As part of his job, the claimant would be required to unload semis that would deliver products to the employer. The claimant was also called to job sites to assist in delivering furnaces or air conditioning units to remove old unit.

On January 13, 2009, the claimant hurt his back as a result of a work-related injury. The injury in question was a herniated disc. The claimant was taken off work during a period of recovery from January 14, 2009 through March 2, 2009. On March 2, 2009, the claimant was given a release to return to regular work and had no restrictions. The claimant returned to his regular job. The claimant was given a \$1.00 per hour raise in April 2009.

The claimant met with his employer on June 10, 2009. He asked his employer for either a \$2.00 or \$2.50 per hour raise. He also requested that the employer provide him with a truck. In

addition, the claimant and Joe Metille, the owner, talked about lifts that the claimant could use to help him with the lifting required. Mr. Metille told the claimant he would get back to him.

Mr. Metille discussed the claimant's requests with his accountant and also spoke to other individuals in the industry to find out how much employees like the claimant were paid. His accountant informed him that given the economy, the claimant's requests were not economically feasible. Mr. Metille also determined that other employers were paying employees like the claimant less than he was paying the claimant.

The claimant and Mr. Metille had a follow-up meeting on Friday, June 12, 2009. The claimant and Mr. Metille have different accounts on what was said and done at that meeting. The claimant was informed that he would not be given a truck for his use and that his hourly rate would not be raised. The lifts would also not be purchased. The claimant was upset and felt that his work was not being appreciated by the employer. He left early that day right after meeting with Mr. Metille.

The claimant came back to work on Monday, June 15, 2009. His key card to access the employer's property did not work. Another employee let him in. When Mr. Metille saw the claimant, he asked the claimant to come into his office. Mr. Metille told the claimant that as far as he (Mr. Metille) was concerned, the claimant had left his job.

#### **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.

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 representative's decision in this case indicated that the claimant was discharged on June 12, 2009, for failing to perform satisfactory work, even though he was capable of doing satisfactory work. The issue in this case, however, is whether the claimant voluntarily left his job with good cause attributable to the employer. Mr. Metille and the claimant have very different versions of what occurred on June 12, 2009. Mr. Metille testified that the claimant was angry and stormed out of the office after he was told that he would not get a truck or a pay raise. The claimant admitted that he was emotionally upset by his employer's refusal to give him a pay raise or a truck or buy some lifts to help with the heavy lifting. However, he said that all he asked for was some time to think about whether he wanted to continue working, since he was not sure that his back would hold up to the heavy lifting required in his job.

In order to determine that the claimant voluntarily quit his job, there must be evidence of the claimant's intention to sever the employment relationship and an overt act in carrying out that intention. After carefully considering all of the evidence in this case, the administrative law judge concludes that the claimant did not quit his job on June 12, 2009. He was obviously upset

that none of his demands were going to be met and probably reacted more strongly than he said he did when he testified at the hearing. The fact that the claimant returned to work on Monday indicates that he did not intend to quit his job, but rather take some time over the weekend to decide whether he wanted to continue working for the employer. Mr. Metille, however, decided not to continue the claimant's employment. It was Mr. Metille that initiated the separation of employment on June 15, 2009. There is no evidence of misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated July 21, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw