

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIM L NEMMERS
Claimant

AARON KONRARDY CONSTRUCTION INC
Employer

APPEAL 15A-UI-05256-EC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/15
Claimant: Appellant (1)

Iowa Code §96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant/appellant, Tim Nemmers, filed an appeal from the April 29, 2015, (reference 02) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 9, 2015. The claimant participated. The employer participated through Aaron Konrardy and his attorney, Darin Harmon.

ISSUE:

Was the separation from employment a voluntary quit with or without good cause attributable to the employer?

FINDINGS OF FACT:

The pertinent facts are undisputed. Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a laborer and framer for this employer, a new home construction business, from February 6, 2015, until his separation from this employment on March 25, 2015, when he informed his employer that he was leaving for another job. At this time, the claimant also told his employer, for the first time, that he had a bad back, and the work was too hard. The employer accepted his resignation. Work remained available with this employer after he submitted his resignation.

The claimant and his employer did not clearly communicate with each other regarding certain details. However, these details do not determine the outcome of this matter.

On March 23, 2015, the claimant communicated an intention to quit his job via text message to his employer. He also told his employer that he needed time off on March 25, either for a job interview or without giving a reason. This request was granted. The claimant worked on March 24 and 25. On March 25, 2015, the claimant had his interview with another employer and was hired for that job. The new job started on April 10, 2015.

On March 25, 2015, the claimant gave a two and a half week notice to his employer. The claimant was willing to continue to work for this employer for that time period. The employer

offered light duty work to the claimant during this time period. The employer told the claimant that he did not have work for him on March 26 or 27, because of the rainy weather. The claimant expected the employer to call him the following week, on March 30, to tell him where to work. The employer expected the claimant to call him if he wanted to work that week. The claimant did not work again for this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the 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 Code § 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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).

Although the claimant's decision to leave this 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 are denied.

DECISION:

The April 29, 2015, (reference 02) unemployment insurance decision is affirmed. 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.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/mak