

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDY L DEGNER

Claimant

APPEAL NO. 11A-UI-09888-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY COMPANY

Employer

OC: 07/03/11

Claimant: Appellant (4)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Andy L. Degner (claimant) appealed a representative's July 25, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Van Diest Supply Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 19, 2011. The claimant participated in the hearing. Carolyn Cross appeared on the employer's behalf and presented testimony from two witnesses, Lee Trask and Clark Vold. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a disqualifying reason?

DISPOSITION:

Modified in favor of the claimant.

FINDINGS OF FACT:

The claimant started working for the employer on November 9, 2006. He worked full-time as a plant operator in the employer's agricultural chemical manufacturing business. His last day of work was June 24, 2011.

The claimant normally worked on a 3:00 p.m.-to-11:30 p.m. shift, but in June had temporarily been assigned to assist with a roofing project on a 7:00 a.m.-to-3:30 p.m. shift. On other days when the weather had been too bad to do the roofing project, he had simply been sent home for the day. On June 27 he came in by 7:00 a.m. and was told the roofing work had again been postponed, so he went home and assumed that the employer would call him to tell him when or if he should report back for work; the employer may have had other regular work for him that week had the claimant not simply gone home on June 27, and the employer assumed that the claimant had simply decided to end his employment early.

On about June 20, the claimant had submitted his notice of resignation; his last day of work was to be July 1. He had gotten an offer of employment from another employer on or about June 18; he was to start that employment on or about July 2.

On about June 30, he received another call from that prospective new employer indicating that there was going to be an at least brief hiring freeze. As a result, the claimant did not start the new job as scheduled, but he did start the new job on or about July 21. He did not establish a claim for unemployment insurance benefits until the week beginning July 3, and only sought benefits between the initial intended date of his new employment until that employment began.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for a non-disqualifying reason. Iowa Code § 96.5-1. One reason a voluntary quit is non-disqualifying is if an employee quits for the reason of accepting and entering into new employment. Iowa Code § 96.5-1-a. While leaving to seek new employment where that hoped-for new employment has not been obtained prior to the quit is does not satisfy this exception (871 IAC 24.25(3), there is also provision under which the employee is deemed to have quit for a non-disqualifying reason "if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment." 871 IAC 24.28(5). However, under these circumstances the employer's account is also not subject to charge.

The claimant did voluntarily quit in order accept a bona fide offer of other employment. The claimant is not disqualified from receiving benefits as a result of his quit from the employer in this case, but the employer's account will not be charged.

The effective date of the claimant's quit was July 1. Had the claimant sought benefits for that week ending July 2, there may have been an issue as to whether the claimant was able and available for work through the end of his notice period. However, given that the claimant did not seek benefits for that week, the question is moot.

DECISION:

The representative's July 25, 2011 decision (reference 01) is modified in favor of the claimant. The claimant voluntarily left his employment, but the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw