

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT J SUDA**  
Claimant

**APPEAL NO. 09A-UI-03474-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CORKERY INDUSTRIES INC**  
Employer

**Original Claim: 07/06/08  
Claimant: Appellant (2)**

Iowa Code section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Robert Suda filed a timely appeal from the March 3, 2009, reference 08, decision that denied benefits. After due notice was issued, a hearing was held on March 27, 2009. Mr. Suda participated. Larry Corkery, President, represented the employer.

**ISSUE:**

Whether the claimant's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Suda was employed by Corkery Industries from January 5, 2009 until February 4, 2009, when he voluntarily quit the employment. The employer reprocesses plastic milk jugs. Mr. Suda applied for and accepted what he thought was a full-time fork-lift operator position. Mr. Suda had prior experience operating a forklift. Mr. Suda had interviewed with and been hired by a team leader. The employer witness for the appeal hearing did not interview or hire Mr. Suda. At the time of hire, Mr. Suda understood that he would be expected to perform some production-related duties, but expected he would primarily be operating a forklift. Mr. Suda's supervisor had him operating a forklift for no more than three hours during the course of the employment. Rather than providing Mr. Suda with full-time hours as agreed at the time of hire, the employer provided Mr. Suda with only 20 to 30 hours per week. On Mr. Suda's final day in the employment, Mr. Suda's supervisor assigned him to shovel sludge. Mr. Suda asserted that he had not been hired to perform such work, left the workplace, and did not return.

**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.

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 employer did not present any testimony from Mr. Suda's supervisor, who is still with the employer. The employer's witness, company President Larry Corkery, did not interview, hire, or supervisor Mr. Suda. The employer witness has no firsthand knowledge of Mr. Suda's employment and can only speak from notes made by others and/or speak in general terms about the employer's hiring and employment policies. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence indicates that Mr. Suda voluntarily quit the employment because the nature of the employment was misrepresented to him at the time of hire. Where a person left work because the type of work was misrepresented to the person at the time of acceptance of the work assignment, the voluntary quit is for good cause attributable to the employer. See 871 IAC 24.26(23).

Mr. Suda voluntarily quit the employment for good cause attributable to the employer. Accordingly, Mr. Suda is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Suda.

**DECISION:**

The Agency representative's March 3, 2009, reference 08, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw