

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN M TUDEEN
Claimant

APPEAL NO. 14A-UI-06631-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTIVE THERMAL CONCEPTS INC
Employer

**OC: 05/25/14
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 8, 2014, reference 02, that concluded he voluntarily quit employment without good cause attributable to the employer. A hearing was held on August 11, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative John Carr, Attorney at Law, and Vernon Wenger, a witness. Amy Nelson participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as an equipment operator from early May 2013 to May 29, 2014. He responded to an ad in the local newspaper stating that the employer was looking for an equipment operator with a class A commercial driver's license. He filled out an application and then was taken by the operations director, Matt Yamilkoski, to a jobsite to demonstrate his skills. After that, Yamilkoski said he was hired and could start working immediately. The claimant asked about filling out paperwork and orientation, but Yamilkoski said he could do that later. When he started working, the claimant told Yamilkoski that he did not want to work out of town. Yamilkoski assured him that was fine because the employer had plenty of work available in town.

Later the claimant signed a standard general "Summary of the Job" statement (along with other new documents) given to all employees that included a statement: "...be out of town staying in a hotel for two to three weeks without coming back." Up until the end of May 2014 the claimant was never asked to travel outside the Cedar Rapids area for work.

In May 2014 Yamilkoski approached the claimant and another employee, Vernon Wenger, about working on a project in Two Rivers, Wisconsin, about five and one-half hours from Cedar Rapids. When the claimant told Yamilkoski that he was not hired to work out of town, Yamilkoski said that he knew that but the job would be just for a couple of weeks moving

equipment to the job and he needed the claimant's help. Yamilkoski said they planned to hire local employees on the project and after the two weeks, the claimant could work in town. Yamilkoski also informed the claimant that he could work Monday through Thursday, for ten hours per day, and return home every weekend. He said that he and Wenger would be provided a company truck, would be compensated for travel time, and have their hotel and meals paid. The claimant agreed to this short-term assignment.

After he moved equipment up to the Wisconsin jobsite for about a week, Yamilkoski told the claimant that the employer needed him to continue to work at the Wisconsin jobsite and he would no longer be able to come home every weekend with paid travel, but instead would have to stay out of town for two to three weeks. When the claimant objected to the change in the arrangement and stated he did not want to go out of town, Yamilkoski informed him that the only work available for the claimant was on the project in Wisconsin. The claimant declined to work in Wisconsin.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. On the other hand, a claimant whose separation is a layoff is qualified to receive benefits. The rules define a layoff as "a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations." 871 IAC 24.1(113)a.

Although the claimant argued he was laid off due to lack of work, since the employer had continuing work available for the claimant but at different work location, the separation is deemed a voluntary quit. The crux of this case then is whether the claimant had good cause attributable to the employer to leave employment.

871 IAC 24.26(1) and (20) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

(20) The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified very credibly about the agreement

he made with his supervisor at the time of hire about not working out of town. Yamilkoski did not testify to rebut the claimant's testimony. I cannot conclude that the standard general "Summary of the Job" statement overrides this specific agreement.

The work available in Wisconsin involved a substantial change in the location of the employment requiring a personal hardship since the employer was requiring the claimant to work out of town five and one-half hours away from home and stay in a hotel for up to three weeks at a time.

In *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700, 702 (Iowa 1988) the Iowa Supreme Court, in discussing a substantial change hours, stated.

It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer. . . . [G]ood cause attributable to the employer can exist even though the employer be free from all negligence or wrongdoing in connection therewith.

As a result, the fact that the employer may not have been at fault for the work for the claimant only being available in Wisconsin, the evidence establishes the claimant quit employment with good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated June 8, 2014, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can