

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOSEPH A MOYLE
2017 W HIGHLAND
SIOUX CITY IA 51103

BOSQUE CONSTRUCTION
298 CR 180
STEPHENVILLE TX 764012

Appeal Number: 05A-UI-02137-CT
OC: 02/01/04 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Bosque Construction filed an appeal from a representative's decision dated February 21, 2005, reference 04, which held that no disqualification would be imposed regarding Joseph Moyle's separation from employment. After due notice was issued, a hearing was held by telephone on March 18, 2005. Mr. Moyle participated personally and offered additional testimony from Cheryl Stowe. The employer participated by Sandra Lee and M. J. Lee, Owners.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Moyle was employed by Bosque Construction from July until December 1, 2004 as a full-time laborer. On or about December 1, he was working with sheet metal on a roof. The sheets of metal are processed with a thin coating of oil and, on this particular day, weather conditions were icy. The combination of ice and oil caused Mr. Moyle to slip on the roof. When he slipped, he fell into the basket of the skyjack platform used to raise the workers. There was a 12-foot area where the platform could not be placed because of the design of the building. The employer provided safety equipment, including rope, that workers could use to tie themselves off to prevent a fall to the ground.

Mr. Moyle notified the employer that he was afraid for his safety because of his fall. He asked whether the working conditions would be the same the following day and was told that they would be. He also discussed the possibility of getting a raise but the raise was denied. He told the employer he was quitting because of his fear and because he had another job offer. Continued work would have been available if he had not quit.

Mr. Moyle has been paid a total of \$930.00 in job insurance benefits since filing his claim effective January 30, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Moyle was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). One of Mr. Moyle's reasons for quitting was that he did not feel safe. He did not cite any safety concerns he had before his last day of work. Therefore, the administrative law judge presumes that he found the working conditions satisfactory prior to that date. The administrative law judge also presumes that the working conditions on his last day were aggravated by the presence of ice on the sheet metal. Although Mr. Moyle did slip and fall, he fell into the platform basket of the skyjack. Part of the reason for the platform is to prevent workers from falling to the ground. In addition to having platforms to prevent workers from falling to the ground, the employer had other safety equipment the workers could use to tie themselves off to prevent falls.

After considering all of the evidence, the administrative law judge concludes that the employer did not neglect to provide the equipment necessary for Mr. Moyle to work safely. It appears that Mr. Moyle also left because he did not receive the raise he requested. However, he had not been promised any raise that was not given. In fact, his wages had been increased by \$2.00 per hour after his first two weeks of employment. The administrative law judge concludes from all of the evidence that Mr. Moyle did not have good cause attributable to the employer for quitting. Accordingly, benefits are denied.

Mr. Moyle has received benefits since filing his additional claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated February 21, 2005, reference 04, is hereby reversed. Mr. Moyle quit his employment for no 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Moyle has been overpaid \$930.00 in job insurance benefits.

cfc/kjf