

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALBERTO VALDOVINOS
Claimant

APPEAL NO. 11A-UI-03003-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEDFORD TREE & LAWN SERVICE CO
Employer

**OC: 01/16/11
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 3, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 30, 2011. Claimant participated through interpreter Ike Rocha. Employer participated through owner Marvin Ledford and was represented by Bethany Currie, Attorney at Law. Claimant's witness was not available when called. Employer's Exhibit 2 was admitted to the record.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked as a seasonal laborer for at least ten years (about 2005) and was separated from employment on January 19, 2011. Claimant's daughter called Ledford on that date indicating he would file for unemployment because it was too cold to work. Employer had work for him that day and would have worked with him to find indoor work if it was too cold to work outside. Claimant generally was scheduled to work regular hours Monday through Friday except when there was snow or inclement weather, which requires flexibility in work hours. In past winters Ledford found other work for claimant to supplement outdoor work when the weather conditions were extreme. He did not report to work or communicate with employer after January 19, 2011. Claimant's daughter called later only to make arrangement to pick up his last check. Employer gave another occasional employee additional hours after claimant discontinued reporting for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment 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.

871 IAC 24.25(21) 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 § 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 § 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:

(21) The claimant left because of dissatisfaction with the work environment.

871 IAC 24.25(27) 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 § 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 § 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:

(27) The claimant left rather than perform the assigned work as instructed.

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).

Generally, when an individual mistakenly believes they are discharged or laid off from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. Since claimant did not follow up with the owner, and his assumption of having been fired or laid off was erroneous, claimant's failure to continue reporting to work was an abandonment of his job. Benefits are denied.

DECISION:

The March 3, 2011 (reference 01) decision is affirmed. The claimant voluntarily left his 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs