

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY P DAVISON**  
Claimant

**APPEAL NO. 10A-UI-16299-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BERTCH CABINET MFG INC**  
Employer

**OC: 12/20/09**  
**Claimant: Appellant (4)**

Iowa Code § 96.5(1)a – Voluntary Leaving - Other Employment

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 17, 2010 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 13, 2011. Claimant participated. Employer participated through Human Resources Director Mitzi Tann and Plywood Mill Department Leader Jeff Becker.

**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 full-time as a stager/plywood apprentice from October 1995 and was separated from employment on August 12, 2010. On August 2, 2010, he gave his notice of his intention to resign. He had been offered another position with Viking Pump contingent on the results of a physical exam on August 5. Based upon a finding of a shoulder repair related to a work related injury at Bertch, Viking Pump withdrew the offer. He requested to withdraw his resignation because of this. Employer told him it should not be a problem so he returned to work on August 9 and spoke with Irv Tummy, production manager, and Becker, who said they would think about it. On August 10 they said they would not allow him to rescind his resignation, so he worked through the effective date of the resignation on August 12, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code § 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit 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 23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit 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. No charge shall accrue to the account of the former voluntarily quit employer.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment but was separated before having started the new employment. Accordingly, benefits are allowed and the account of the employer shall not be charged.

**DECISION:**

The November 17, 2010 (reference 02) decision is modified in favor of the appellant. The claimant voluntarily left his employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 140081) shall not be charged.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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