

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESSE D WHETSTONE
Claimant

BELINDA HANSON
V & H AG SYSTEMS INC
Employer

APPEAL 14A-UI-12003-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/26/14
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed an appeal from the November 13, 2014, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2014. Claimant did not participate. Employer participated through Brian Hansen, President.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a laborer beginning in March 2014 through October 1, 2014 when he voluntarily quit. When hired the claimant and his coworkers were told that they would be paid on a 'piece-work' basis. The crew would be paid based upon the weight of the buildings they were constructing. The employees were never told that they had a specific deadline to meet or that if the employer had to bring in extra help to complete the work, their pay would be reduced or cut. On October 1 the claimant learned that his pay was going to be cut for the week just completed because the employer had brought in additional crew members. The claimant objected and the employer agreed that the next week he would 'make it right' and give the employees some extra pay. None of the employees were paid what they would have been paid had the employer not brought in extra crew members. The claimant was never warned or told that his pay could be reduced if the employer chose to bring in more employees. The next week the claimant's coworkers were given extra pay, but not the same amount as they would have been given had the employer not brought in additional employees.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Admin. Code r. 871-24.25(13) 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

In the absence of an agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving employment. *Deshler Broom Factory v. Kinney*, 140 Nebraska 889, 2 N.W.2d 332 (1942).

The claimant was never told or warned that his pay could be reduced if another crew was brought in. Under these circumstances this amounts to a unilateral change of the rate of pay by the employer. Such a change gave rise to a good cause reason for leaving the employment. Benefits are allowed.

DECISION:

The November 13, 2014 (reference 01) decision is affirmed. The claimant voluntarily left his employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs