

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE M GONZALEZ-GAZCA**  
Claimant

**APPEAL NO: 17A-UI-12393-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TBC CONSTRUCTION LLC**  
Employer

**OC: 11/12/17**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 1, 2017, reference 01, representative's unemployment insurance decision which denied benefits finding that the claimant voluntarily quit work on October 6, 2017 without good cause attributable to the employer. After due notice was provided, a telephone hearing was held on December 21, 2017. Claimant participated. Participating as a witness for the claimant was Mr. Victor Gonzalez, the claimant's cousin/employee off TBC Construction LLC. The employer participated by Mr. Troy Berglund, Company President.

**ISSUE:**

Whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: the claimant was employed by TBC Construction, LLC as a full-time laborer/driver/finish helper from April 11, 2017 until October 6, 2017 when he voluntarily quit employment. The claimant was paid by the hour. His immediate supervisor was the Company President, Troy Berglund.

Jose Gonzalez-Gazca left his employment with TBC Construction, LLC on Friday, October 6, 2017, because of a pay dispute with his employer. The claimant believed that he had worked 48 hours that week; however company records reflected that the claimant had only worked 46.5 hours. Mr. Berglund, the Company President and the claimant discussed the discrepancy in working hours as other workers performed other duties towards the end of the day. The closest other worker was approximately eight to ten feet away as the parties discussed the discrepancy in the number of hours worked.

During the conversation, Mr. Berglund stated his belief that the 46.5 hours was correct, but offered to review the matter further. Although the employer had reconciled issues of the number of hours worked in the past, the claimant continued to argue that he should be paid for 48 hours of work that week. Other members of the same crew did not dispute the number of working

hours the crew members were being paid for that week by the company, and Mr. Gonzalez-Gazca had worked fewer hours that week.

When other workers resumed work that afternoon for approximately one and one half hours of additional work, the claimant did not join them, but continued to argue that he had worked 48 hours that week and should be paid for 48 hours at that time. Based upon the claimant's statements and failure to resume work, Mr. Berglund asked whether it was the claimant's intention to quit to which Mr. Gonzalez-Gazca responded "I don't need this job" the employer responded that if he was quitting, he should turn in his keys.

During the weekend, Mr. Berglund contacted the claimant on two occasions about whether the claimant's intended to return to work. He also sent the claimant a text message about inclement weather. When Mr. Gonzalez-Gazca did not respond nor return to work, the employer reasonably concluded that the claimant had in fact quit employment, although, the employer had agreed to resolve the pay dispute.

It is the claimant's position that he did not quit but was discharged by the employer when he had requested pay for the hours that he had worked that week.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first question before the administrative law judge is whether the claimant was discharged or quit employment. The administrative law judge concludes that a preponderance of the evidence establishes that Mr. Gonzalez-Gazca quit employment and was not discharged by the employer. Although the testimony of the primary witnesses is disputed, the administrative law judge finds that the employers conduct by offering the claimant a ride home, and contacting him on more than one occasion over the weekend about working the following week, is not consistent with that of an employer who has just discharged that worker.

The next question before the administrative law judge is whether the evidence in the record establishes that Mr. Gonzalez-Gazca had good cause attributable to the employer for quitting his job? He did not.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(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 section 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 section 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.

Iowa Admin. Code r. 871-24.26(4) provides:

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:

(4) The claimant left due to intolerable or detrimental working conditions.

In this case, the parties had previously worked well together, and in the past if a dispute over hours work occurred, the employer looked into the matter and reconciled the pay discrepancies. During the claimant's final week of employment, there was a 1.5 hour discrepancy in the number of hours that the claimant believed that he had worked, and the number of hours that the employer had recorded for the crew. Although other crew members, who worked at the same job site, did not dispute the number of hours tallied by the employer for that week, Mr. Gonzalez-Gazca disputed the hours and was unwilling to wait until the employer had an opportunity to review its records, but expected the employer to pay the additional 1.5 hours immediately. The claimant continued to dispute the number of hours, and did not go back to work with the other crew members. Because of this, the Company President asked the claimant if he was quitting, and told him if he was quitting he should turn in his company keys. Mr. Gonzalez-Gazca turned in his keys after he was told to do so "if he was quitting his job". The claimant chose to turn in the keys and quit employment. The employer's act of contacting the claimant on two or more occasions over the weekend about work the next week was not conduct that would be consistent with that of a company who had discharged a worker.

The crux of Mr. Gonzalez-Gazca's leaving employment was because he felt the working conditions were intolerable as he felt he was not being paid for all of the work he was performing. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). When a person voluntarily quits employment due to dissatisfaction with the work environment or inability to accept a reasonable management decision, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21)(6).

Based upon the evidence in the record, the administrative law judge concludes that the employer's initial unwillingness to pay the claimant for additional working hours were without verifying the hours had been worked, would not have prompted a reasonable person to quit employment. Accordingly, the administrative law judge concludes that Mr. Gonzalez-Gazca voluntarily quit in the employment without good cause attributable to the employer, and is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's unemployment insurance decision dated December 1, 2017, reference 01 is affirmed. Claimant voluntarily left his employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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