

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY NAPLES
Claimant

APPEAL NO: 06A-UI-08943-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NIKKEL & ASSOCIATES INC
Employer

**OC: 07/23/06 R: 02
Claimant: Respondent (4)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 30, 2006, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 26, 2006. Claimant participated. Employer participated by Andy Foster, Job Site Supervisor; Randy Burkhart, Project Manager; and Tom Bervig, Human Resource Manager. Exhibits A through E were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 26, 2006. Claimant refused to work with a hard hat due to the heat. Claimant was sent home. Claimant did not come back to work after that date. Claimant did call in several times to try to resolve the issue. At the same time claimant had interviewed with another company. Claimant had a job offer from the other company with a rate of pay that was over three dollars an hour better. Claimant abandoned his job by not reporting in for three consecutive days. The quit was in part for new and better employment. Claimant worked at the better job.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of job abandonment and an offer of new and better employment. Claimant had new and better employment lined up before the actual separation. This is a quit by abandonment for new and better employment. Employer's account shall not be charged. However, claimant has re-qualified by working in new and better employment. Benefits allowed.

Iowa Code section 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.

DECISION:

The decision of the representative dated August 30, 2006, reference 01, is modified. Employer's account shall not be charged with benefits paid on this claim. Credits shall be charged to the unemployment compensation fund. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/cs