

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW C BLAZEK
Claimant

APPEAL NO. 12A-UI-04589-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADAIR COUNTY
Employer

OC: 03/25/12
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated, April 18, 2012, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on May 15, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Richard Schmidt. David Williams participated in the hearing on behalf of the employer with witnesses Janet Jones and Charles Marker.

ISSUE:

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

FINDINGS OF FACT:

The claimant worked full time for the employer in the position of equipment operator-bridge crew laborer from September 9, 2010, to February 27, 2012. His supervisor was the county engineer, Charles Marker.

The claimant sustained an injury to his shoulder while he was off work that was not attributable to his employment. He had rotator cuff surgery in September 2011 and was off work on Family and Medical Leave Act (FMLA) leave until November 2011, when he was released to return to full-time work with light duty restrictions. He worked in a light-duty job until January 2012, when medical complications required he have a second surgery on his shoulder. That surgery was on January 9, 2012.

The claimant was off work on FMLA leave recuperating after his surgery until January 24, 2012, when he exhausted FMLA leave. He was granted a one-month unpaid leave of absence from January 24 to February 23, 2012.

At the end of February 2012, since the claimant had exhausted all form of leave and was still under light-duty restriction that would not allow him to perform the duties of his regular job as an equipment operator-bridge crew laborer, the employer offered the claimant a job classification change to a part-time position working between 30-40 hours per week at a rate of pay of \$10 per hour assisting the engineering staff with documentation, surveying, and inspecting, and other duties within his restrictions. He still had a five-pound weight restriction, no overhead reaching, and no heavy

equipment operation. He was informed that his work status would be reviewed after his next doctor's appointment on April 4, 2012. The claimant's rate of pay at the time of the offer was \$15.53 per hour. He was offered the same rate of pay as other part-time employees with the same benefits as part-time employees, which included health insurance with him paying a prorated share of the premium.

The claimant agreed to the job classification change as described above and worked in that position from February 27 to March 28. On March 28, 2012, the claimant submitted a written resignation effective immediately. He voluntarily quit employment because he could not afford the costs of commuting to work and paying for his health insurance premium at the \$10 per hour he was being paid.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant stated he quit because he could not afford the costs of commuting to work and paying for his health insurance premium at the \$10 per hour he was being paid. The agency's determination that he quit to due medical reasons is not correct, because the injury was not the motivating factor for his resignation.

871 IAC 24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant is not eligible for benefits based on 871 IAC 24.26(1) or another provision of the unemployment insurance law. He accepted the job classification change and worked in the job for a month. As a result, the claimant quit employment without good cause attributable to the employer. He knew the rate of pay, the insurance costs, and transportation expenses when he accepted the job classification change.

DECISION:

The unemployment insurance decision dated April 18, 2012, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw