

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID BENNETT
Claimant

APPEAL NO. 09A-UI-14270-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY CONSTRUCTION GROUP LC
Employer

OC: 08/23/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 14, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 29, 2010, in Cedar Rapids, Iowa. Claimant participated. Employer participated by Jon Tiemeyer, President/Owner; Richard Mills, Superintendent; Shannon Robinson, Superintendent; and Charles Larew, Laborer. The record consists of the testimony of David Bennett; the testimony of Jon Tiemeyer; the testimony of Richard Mills; the testimony of Shannon Robinson; the testimony of Charles Larew; and Employer's Exhibits 1-6.

ISSUE:

Whether the claimant voluntarily let for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a construction company headquartered in Iowa City, Iowa. The employer had a number of contracts with the University of Iowa. One contract was for work at the Jacobsen Center, which is the facility for men's track and field. In addition, there were contracts for work in various parts of University of Iowa Hospitals and Clinics.

When a contract is opened for bid and the work is to be done at the hospital, the specifications include what a contractor must do to comply with provisions in place for infection control. For example, a contractor may be informed that it will be necessary to use negative air machines or do HEPA vacuuming or erect solid walls. A contractor must take into account these infectious disease controls and factor them into any bid that is submitted. The contractor is constantly monitored by the University and is subject to OSHA inspections as well. The employer in this case also had a safety program and held daily safety meetings with its employees.

The claimant was hired on June 30, 2008. He was interviewed for the position at the hospital and knew that the employer was doing work in various parts of the hospital. He was initially assigned to crew at the Jacobsen Center. The claimant had some difficulties working with one of the other employees on the crew and so he was transferred over to the hospital crew.

On October 17, 2009, the claimant was off work for an elective surgical procedure. He returned to work on the following Monday. The employer scheduled a meeting for October 27, 2009, to discuss concerns with the claimant on his work performance. The written agenda and minutes from the meeting show that the topics discussed included doing work as directed and following instructions. (Exhibits 1 and 2).

The claimant was experiencing some pain and on October 28, 2009, he consulted his physician. He was admitted to the hospital on October 29, 2009, for in-patient treatment of a MRSA infection, community acquired. He was discharged on November 1, 2008. The claimant informed his employer that he had a staph infection. Shannon Robinson, the superintendent on the hospital jobs, contacted epidemiology at the University of Iowa. He was informed that the claimant could return to work when released by his doctor.

The claimant did return to work and was assigned to the Jacobsen Center. On November 21, 2008, he approached his supervisor, Richard Mills, and informed Mr. Mills that he was quitting. He told Mr. Mills that he did not feel that he was being "utilized" as he wanted. He did not see a future for himself with the employer. Work was available for the claimant at the time of his resignation.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case established that it was the claimant who initiated the separation of the employment. He intended to sever the employer/employee relationship and did so by telling his supervisor, Richard Mills, that he was quitting. The claimant admitted that he told Mr. Mills he was quitting because he did not feel that he was being utilized as he wanted by the employer. He felt he had no future with the employer.

At the hearing, however, the claimant testified that the real reason he quit was his anxiety about working at the University of Iowa sites. He did not like working in the hospital and seeing patients. He said he was not prepared for this. After he got a MRSA infection following elective surgery that was not work related, he became especially concerned about contracting an infection. He never reported these problems to the employer.

The employer's testimony established that all of the procedures set forth by the University for infectious disease control were followed by the employer. Safety equipment was available. The employer passed two OSHA inspections while the claimant worked for the employer and was not issued a single citation. There is no evidence that the claimant's MRSA infection was caused by his employment.

The claimant made the personal decision to quit his job. He did not like the working environment even though he knew he was going to be working on projects involving the hospital. The claimant left voluntarily without good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated September 14, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css