

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES E VROEGH
Claimant

TRI CITY ELECTRIC CO OF IOWA
Employer

APPEAL NO. 18A-UI-12187-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/25/18
Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 17, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 9, 2019. Claimant participated. Employer participated by Nicole Leyendecker and Travis Keeney. Claimant's Exhibits A-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 November 21, 2018. Claimant voluntarily quit on that date as he told employer that he couldn't do it, regarding claimant's return to do work at a cement factory.

Claimant had done electrical work, off and on, at a Portland Cement factory, in addition to doing work at many different facilities including a local John Deere plant. In October of 2017, the safety director for employer received information that claimant had inquired about receiving a respirator that he could use while working at the cement plant. The claimant had a fitting for the correct size respirator and received a respirator that he could wear while at the cement plant. Claimant had no problems with the respirator.

Claimant stated that he had concerns that he'd gone years before getting the respirator. Claimant had no medical documentation that he suffered any ill effects from not wearing a respirator. Claimant stated that he had worries about the past years that he hadn't worn a respirator, and worries that he hadn't been retested for the fit of the respirator in a couple weeks, more than a year that federal guidelines dictate. Claimant didn't ask the employer for a yearly refitting of the respirator, but instead just decided to quit rather than work at the cement factory any more.

Employer stated that federal regulators come by the cement factory on a yearly basis and had determined areas where respirators were mandatory and areas where they were optional.

Employer stated that the areas where claimant worked were optional respirator areas, but when claimant requested to use a respirator, employer provided one for him.

REASONING AND CONCLUSIONS OF LAW:

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.

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 he felt that his working in a cement plant could potentially be dangerous to his health.

Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* Here, claimant did not prove that he had good cause to quit his employment that was attributable to employer. Claimant is certainly within his rights to quit his employment, but absent any showing that the quitting was brought about by an action of the employer, said quit is not seen as being for good cause *attributable to employer* (italics added for emphasis). In this matter, claimant did not say that the fit of his respirator was in question, nor did he state that he'd asked for his yearly fitting to be done prior to his quit. In the absence of these actions, claimant's quit is disqualifying.

DECISION:

The decision of the representative dated December 17, 2018, 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.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn