

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN A SINN
Claimant

APPEAL NO. 13A-UI-11791-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANDERSON TOOLING INC
Employer

OC: 09/22/13
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 10, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, an in-person hearing was held on March 26, 2014 in Ottumwa, Iowa. Claimant participated. Employer did participate through Dean Anderson, President; Carol Anderson, Vice-President; Chivonne Anderson, Director of Finance, Business Operations and Human Resources; and Brian Anderson, Manager. Employer's Exhibit one was entered and received into the record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a rigger/estimator beginning on July 20, 2007 through September 23, 2013 when he voluntarily quit. The claimant underwent knee replacement surgery in July 2013. No physician has offered the medical opinion that the claimant's knee replacement surgery was necessitated by a work-related injury or illness. The claimant was released to return to work without any work restrictions on September 23, 2013. The employer had already determined that when the claimant came back to work they were going to use his expertise to bid or estimate jobs instead of having him perform the actual installation. The claimant would have spent the vast majority of his time working in the office or making estimates of jobs. The claimant never asked the employer to make any accommodations for him due to his knee surgery. Had he claimant showed up for work on September 23 or contacted the employer prior to that time, he would have learned that he would not be required to climb ladders in the future. The employer complied with all of the doctor's notes taking the claimant off work for any period of time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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.

871 IAC 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 § 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 § 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

There is no medical evidence in the record that indicates the claimant had any work restrictions that would have prevented him from returning to his regular job. The employer was planning on having the claimant perform estimating work primarily which meant he simply never would have been required to climb a ladder. The claimant chose to quit rather than return to work for the employer. Under these circumstances the claimant has not established a good-cause reason attributable to the employer for leaving the employment. Benefits are denied.

DECISION:

The October 10, 2013, (reference 01) decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css