

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN D DACRE

Claimant

APPEAL NO. 08A-UI-04599-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

PHOENIX C & D RECYCLING INC

Employer

**OC: 94/06/08 R: 02
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Shawn D. Dacre filed a timely appeal from an unemployment insurance decision dated May 1, 2008, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on May 28, 2008 with Mr. Dacre participating. Operations Vice-President Chris Reynolds and Accountant Melissa Smith participated for the employer, Phoenix C & D Recycling, Inc.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Shawn D. Dacre was employed by Phoenix C & D Recycling, Inc. as a laborer on a rock crushing crew from July of 2007 until he resigned on or about November 27, 2007. He was a full-time employee. He resigned because he felt that the worksite was unsafe and because of repeated errors by the company that had resulted in his pay being shorted four times, including the day of the resignation. Two of the four inaccurate paychecks were corrected on the same day, but the other two took up to a week to correct.

Mr. Dacre reported the safety problems to his supervisor, Ivan Thrap. These concerns were not passed along to company management. On the day of resignation, the apron on the rock crushing machine would not close properly. Mr. Dacre and his coworkers had to hold the apron in place with a front end loader. Throughout his employment, the emergency switch on the conveyor belt was broken and could not be used.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant left work with good cause attributable to the employer. It does.

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.

The claimant has the burden of proof. See Iowa Code section 96.6-2. The evidence establishes continuing safety problems at Mr. Dacre's worksite. Resignation because of unsafe working conditions is considered to be for good cause attributable to the employer. See 871 IAC 24.26(2).

The employer's breach of the employment agreement also gives an employee good cause attributable to the employer to resign. See 871 IAC 24.26(1). The evidence establishes that the employer failed to pay Mr. Dacre accurately on four occasions in a period of employment that lasted at most five months. The administrative law judge concludes that the employer breached its agreement to pay Mr. Dacre for his labor on those occasions. Especially when viewed in the context of the evidence concerning unsafe working conditions, the evidence is sufficient to establish good cause attributable to the employer for the resignation. Benefits are allowed.

DECISION:

The unemployment insurance decision dated May 1, 2008, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

css/css