

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D BIXBY
Claimant

APPEAL NO. 13A-UI-13847-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING
Employer

OC: 11/10/13
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated December 13, 2013, reference 05, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on January 13, 2014. The claimant participated personally. The employer participated by Colleen McGuinty, unemployment benefits administrator, and Lakendra Stafford, industrial account manager. The record consists of the testimony of Colleen McGuinty; the testimony of Lakendra Stafford; and the testimony of Michael Bixby.

ISSUE:

Whether the claimant voluntarily left 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 is a temporary staffing agency. The claimant accepted his first assignment from the employer on October 28, 2013. He was assigned to work at Production Cutting Service as a full time laborer-machinist. His last day of work was November 5, 2013.

The claimant did not come to work on November 6, 2013. He reported his absence to his employer. He was off work because he was having back pain due to a non-work-related injury. He was supposed to return to work on November 7, 2013, but he was still having back pain and needed to return to his physician for further evaluation. He did provide a medical report and was told that he needed a release to return to work without restrictions. The parties dispute when and if the claimant provided the requested medical report. The employer received an email from its client on whether the claimant was returning to work on November 11, 2013. The employer called the claimant but he was having a CAT scan done when the employer called. He was released to return to work on November 12, 2013. The employer, however, had ended his assignment because he did not contact the employer.

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 claimant is eligible for unemployment insurance benefits. The evidence showed that the claimant was absent from work due to a medical condition and the employer was aware that the claimant was absent for that reason. There appears to have been a breakdown in communication somewhere and the employer may not have had all of the information that the claimant insists he provided. The claimant testified that he did not quit. Rather the employer ended the assignment, which is, in effect, a discharge. Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd., 810 N.W.2d 532 (Iowa Ct. App. 2012) Benefits are therefore allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated December 13, 2013, reference 05, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs