

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS M GAULT
Claimant

APPEAL NO: 13A-UI-04493-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENTELEE INC
Employer

OC: 03/17/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Entegee, Inc. (employer) appealed a representative's April 3, 2013 decision (reference 01) that concluded Thomas M. Gault (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2013. The claimant participated in the hearing. Tom Kuiper of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Brenda Wiese. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 25, 2011. He worked full time as a senior designer on a contract basis at the employer's Dubuque, Iowa business client. His last day of work was March 1, 2013.

On February 28 the employer's on-site representative had informed the claimant that he was no longer needed in his current position due to budget cuts on the part of the business client; the representative told the claimant that he might be reassigned elsewhere, and the claimant told the representative to let him know as soon as possible. The claimant heard nothing further from the representative on Friday, March 1. On Monday, March 4, the claimant reported in for work as usual but found that he had been locked out of all of the employer's computer systems. He then went back home where he used his personal computer to send an email that day and other

on March 5 to the employer's representative, asking if he was being transferred to another assignment. The claimant received no response from the representative. When he had heard nothing further by Thursday, March 7, he concluded that the employer did not have a new assignment for him. He then turned in his work laptop to the business client, and returned to his home in Michigan.

The employer provided second-hand testimony that there had been continuing work available for the claimant; the employer considered the claimant to have voluntarily quit by job abandonment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he voluntarily quit by job abandonment. The claimant reasonably believed that his job with the business client was ended and that the employer did not have any further work available for him. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code §96.6-2. As the separation was not a voluntary quit, it must be treated as another form of separation. 871 IAC 24.26(21).

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The separation between the claimant and the employer was a layoff by the employer due to the business client no longer needing the claimant; the employer had no work it could provide to the claimant. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's April 3, 2013 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did effectively lay off the claimant, which is not a disqualifying separation. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs