

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L LEWIS
Claimant

APPEAL NO. 07A-UI-05560-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KVAERNER SONGER INC
Employer

**OC: 05/13/07 R: 12
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Richard L. Lewis (claimant) appealed a representative's May 31, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Kvaerner Songer, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 20, 2007. The claimant participated in the hearing. Lorriane Rulong appeared on the employer's behalf. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on June 20, 2006. He worked full time as an iron worker at the employer's Council Bluffs, Iowa, power plant construction project. His last day of work was May 9, 2007. He provided a week's notice prior to that date that he would be resigning as of May 9. The reason the claimant quit was that he believed he had a likelihood of employment with another employer that would be closer to his primary home in Quincy, Illinois.

The other position would have been offered to the claimant from the Burlington, Iowa, ironworkers local to work on a job site in Hannibal, Missouri, if the contractor the claimant had believed would get the contract had been awarded the contract, and the job would have started on or about June 1 at the St. Louis, Missouri, union scale rate. However, the contractor the claimant believed would get the contract did not get the contract; the contractor that did get the contract did not go through the Burlington union to hire workers. Therefore, the claimant did not get the job he had hoped he would get.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

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.

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. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving to seek other employment where other employment is not actually secured is not good cause. 871 IAC 24.25(3). In order to escape disqualification where the quit is for accepting other or better employment, there must have been an actual job offer that the claimant actually accepted. Wood v. Iowa Department of Job Service, 312 N.W.2d 579 (Iowa 1981). In this case, there was not an actual offer of employment, but at most a tentative offer of employment conditioned on the contractor being awarded the contract, which did not happen. While the claimant may have had a good personal reason for determining to seek new employment closer to his primary home, he has not satisfied his burden. Benefits are denied.

DECISION:

The representative's May 31, 2007 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of May 9, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw