

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN J BURGHARDT
Claimant

APPEAL NO. 07A-UI-00075-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NETTLE CORPORATION
Employer

OC: 01/01/06 R: 01
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

John Burghardt filed an appeal from a representative's decision dated December 14, 2006, reference 03, which denied benefits based on his separation from Nettle Corporation. After due notice was issued, a hearing was held by telephone on January 22, 2007. Mr. Burghardt participated personally. The employer participated by Pam Fuhrman, Payroll Manager.

ISSUE:

At issue in this matter is whether Mr. Burghardt was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Nettle Corporation and Negus are "sister" companies with common management and a common paymaster. Mr. Burghardt began working for Negus on August 16, 2004 as a full-time heavy equipment operator. He was usually laid off during the winter months. He was discharged by Negus on June 8, 2006 when he advised the employer that he would be unable to pass a drug screen.

On August 28, 2006, Mr. Burghardt's union referred him for work with Negus and he was rehired. He was being paid \$18.66 per hour. On September 29, he was sent to a different site working for Nettle. The hourly rate of pay was \$13.00 and he also received a \$30.00 per diem. In addition, the employer was required to pay \$6.25 per hour into a benefit fund maintained by the union. Mr. Burghardt was paid weekly. He had attendance issues on the assignment that began September 29. He was late on several occasions and was absent without notice on October 6. On October 23, he worked four hours and was sent home. He was told to call later but never did.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that Mr. Burghardt quit his employment when he failed to contact the employer after October 23 as requested. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Burghardt left the employment because he was not happy with the wages. As an individual working out of a union hall, he knew or should have known that pay scales might differ depending on whether there was a collective bargaining agreement covering the geographic area where the work was being performed.

In his assignment prior to September 29, Mr. Burghardt was earning \$18.66 pr hour. His pay on his last assignment was \$19.25 per hour, with \$13.00 per hour being paid directly to him and the remaining \$6.25 per hour being paid into a union fund on his behalf. Although he may have had less pay coming directly to him, the administrative law judge cannot conclude that his wages were reduced. Moreover, Mr. Burghardt did not quit immediately when he realized he had less direct pay. It appears that he quit only after being disciplined regarding his attendance. The administrative law judge concludes that he left the employment because he was reprimanded and not because of the pay.

An individual who leaves employment after being reprimanded is presumed to have quit for no good cause attributable to the employer. 871 IAC 24.25(28). Given the administrative law judge's conclusions regarding the pay issue, it is concluded that Mr. Burghardt has not overcome the presumption that his quit was without good cause attributable to the employer. Accordingly, benefits are denied.

DECISION:

The representative's decision dated December 14, 2006, reference 03, is hereby affirmed. Mr. Burghardt voluntarily quit his employment for no 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs