

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES R SCHULTZ
Claimant

APPEAL NO. 08A-UI-07941-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELSON WILLIAMS LININGS
Employer

**OC: 03/16/08 R: 03
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated August 27, 2008, reference 03, which denied benefits based upon his separation from Nelson Williams Linings. After due notice was issued, a hearing was held by telephone on September 17, 2008. Mr. Schultz participated personally. The employer participated by Marvin Saltzman, Company Owner.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from April 7, 2008 until May 5, 2008 as a full-time laborer being paid by the hour. His immediate supervisor was Todd Arola. Mr. Schultz discontinued reporting for available employment on or about May 5, 2008. Continuing work was available to laborers at that time and the claimant knew or should have known that work continued to be available to him. Mr. Schultz had a history of poor attendance with the company and had been warned along with other laborers regarding their lack of attendance. The company had offered extra bonuses to the laborers in an effort to enhance their dependability. After Mr. Schultz had not reported for scheduled work for a number of days he was personally contacted by the company owner and specifically requested to report back to work the next day. Although the claimant indicated he would do so he did not report due to transportation problems and did not further contact the company leaving the employer to the reasonable conclusion that the claimant had relinquished his position with the company.

It is the claimant's position that he had been "laid off" by his supervisor and had not promised to report to work after being contacted by the company president regarding his lack of attendance.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Schultz voluntarily quit employment without good cause attributable to the employer. It does.

The evidence in the record establishes that continuing work was available to company laborers and that the claimant knew or should have known that he was expected to continue to report for scheduled work. The claimant had previously been specifically warned by the company owner regarding lack of attendance and was aware that work for laborers continued to be available each day even though other more specialized crew members were not present. When contacted by the company president after not reporting for work for a number of days the claimant specifically agreed to report to work the following day but did not do so and had no further contact with the employer. The employer was thus reasonable in its conclusion that the claimant had chosen to voluntarily leave employment.

Although the administrative law judge is cognizant that the claimant maintains that he was "laid off" and that he had not promised to return to work after being asked to do so, the administrative law judge finds the claimant's testimony to strain credibility. Mr. Schultz maintains the he desired to be employed; however, the record shows that he had been absent on numerous occasions and had not availed himself of the opportunity to continue working. The claimant had been specifically requested to resume working by the company owner.

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.

For the reasons stated herein the administrative law judge concludes that the claimant's separation from employment was disqualifying. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated August 27, 2008, reference 03, is affirmed. The claimant voluntarily quit work for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing that he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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