

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE W DIERENFIELD
Claimant

APPEAL NO. 11A-UI-15971-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

E & I SPECIALISTS INC
Employer

OC: 11/06/11
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 7, 2011, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A hearing was held on January 24, 2011, in Sioux City, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing. Laurelle McDannel participated in the hearing on behalf of the employer. Exhibits One and A were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as an electrician from September 12, 2011, to November 7, 2011. He lives in Aurelia, Iowa. The claimant was first told about a job in North Dakota. He declined the job and told the human resources director that he would not accept a job requiring him to stay overnight away from home. Later the HR director told the claimant the employer had job sites in Hanlontown, Jewell, and Gowrie, Iowa. The job in Gowrie was about 80 miles away from the claimant's home. The job in Hanlontown was about 150 miles away and Jewell was about 120 miles away. The claimant accepted the Gowrie job because he could be home every night. He was initially paid \$20.00 per hour with a \$30.00 per day per diem for working more than 60 miles from home.

After working a couple of weeks, the claimant contacted Don Peters, project manager for the employer. He told Peters that he was leaving because the person assigned to work with him did not speak English and he had to redo most of the things this worker had done due to communication problems. Peters asked him what it would take to get him to stay. The claimant said he wanted a \$2.00 per hour raise. Peters agreed and said he would also give the claimant \$50.00 per day per diem for acting as the lead worker on the project. The claimant agreed to this but said when the Gowrie job was done, he wanted to be transferred to the job in Okoboji, Iowa, which was approximately 63 miles from the claimant's home. Peters agreed that the claimant could transfer to the Okoboji job after the Gowrie job was done.

The Gowrie job was finished on November 7. On November 9, the claimant contacted the HR director about where he was supposed to go next. The HR director told him that he could finish out the week in Hanlontown, work the following week in Gowrie closing down the job site, and then transfer to a job site in Vermillion, South Dakota. Vermillion is about the same distance as Gowrie from the claimant's home but the drive is about 15 minutes longer.

The claimant asked HR director about transferring to the Okoboji job. The HR director informed him that the Okoboji job had not started and would not start for some time. The claimant asked if he could be considered laid off. The HR director said no, because there was work available. The claimant then told the HR director that he was quitting.

The claimant quit because he understood, based on his agreement with Peters, that after the Gowrie job, he would be transferred to a job that involved a substantially shorter commute to work. Instead, the jobs offered involved longer commutes.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

871 IAC 24.25(30) provides: "The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:"

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

The agency applied this rule in disqualifying the claimant. However, this involves a different set of facts. In essence, the claimant and Peters agreed that after the Gowrie job was completed, the claimant would be on a job that involved substantially less commuting. But the work offered the claimant involved a longer commute to Hanlontown and Vermillion. Good cause attributable to the employer for quitting has been shown.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated December 7, 2011, reference 01, is reversed.
The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css