

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DWAYNE J KRUMVIEDE
Claimant

APPEAL NO. 07A-UI-10513-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPRINGVILLE READY MIX INC
Employer

OC: 01/14/07 R: 04
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Dwayne Krumviede (claimant) appealed a representative's October 29, 2007 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Springville Ready Mix (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 30, 2007. The claimant participated personally. The employer participated by Larry Wittenburg, President.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in June 2001, as a full-time truck driver. The employer had a verbal policy that an employee could not receive holiday pay if he was not available for work the days before or after a holiday. Labor Day was September 3, 2007. The Saturday before the holiday, the claimant was originally unavailable for work but he later told the employer he was available. The employer responded that the claimant was lucky that he found someone to work his hours the Saturday before the holiday.

The claimant took vacation from September 13 through 15, 2007. On September 13, 2007, the claimant opened his paycheck and found the employer did not pay him holiday pay. The claimant telephoned two office workers about the mistake in his paycheck. Later, he talked to the president. They argued and the claimant hung up on the employer. Two days later, the employer telephoned the claimant and told him he could take the week off for hanging up on the employer.

On September 25, 2007, the claimant returned to work and the two again starting arguing about the holiday pay. The claimant walked off the job.

On October 26, 2007, the employer offered the claimant work, but the claimant had previous plans. On October 29, 2007, the employer again offered the claimant work, but he was waiting to hear about another job. He did not contact the employer when the other job did not materialize.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons, the administrative law judge concludes he did not.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his actions. He walked off the job on September 25, 2007. In the absence of agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 140 Nebraska 889, 2 N.W.2d 332 (1942).

When an employee quits work because the employer did not pay wages when they were due without an agreement to the contrary, his leaving is with good cause attributable to the employer. The claimant left work because he was not paid holiday wages when they were due and there was no agreement to the contrary. The employer understood that he was to pay if the employee was available the day before the holiday. The claimant was available before the holiday and the employer did not give him holiday pay. His leaving was with good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 29, 2007 decision (reference 02) is reversed. The claimant voluntarily quit with good cause attributable to the employer on September 25, 2007. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw