

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES S ZDANOWICZ

Claimant

APPEAL NO. 12A-UI-03318-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRUENING ROCK PRODUCTS INC

Employer

OC: 02/19/12

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 28, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on April 17, 2012. Claimant participated. Employer participated through Payroll Manager Brian Svestka and Crushing Foreman Mike Shelton and was represented by General Counsel Ron Fadness.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a stockpile and crushing crew member from May 7, 2011 and was separated from employment on October 21, 2011. The backup alarm broke earlier that day and the heater was not working on the truck assigned to the claimant. Shelton told him earlier that morning, "If you break the rear end on that truck you'll be looking for another job," so claimant assumed he was fired. The rear end of the truck was not broken, he did not confirm his employment status with Shelton, and Shelton never told him he was fired. After another employee, Travis, positioned his vehicle so the exhaust blew into claimant's truck cab, whether deliberately or not, he left the work site. Shelton saw claimant leave around noon without notice to or permission to leave. The shift would have ended about 6 p.m. Shelton called him on his cell phone and asked him where he was going. He said the job was not for him and he "could not put up with that Travis kid." He did not break anything on the truck, so continued work was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Code § 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(6) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. Since claimant left because of a coworker, did not follow up with Shelton about his employment status, and his assumption of having been fired was erroneous, his leaving the worksite during the shift was an abandonment of the job. The leaving was without good cause attributable to the employer and benefits are denied.

DECISION:

The March 28, 2012 (reference 01) decision is affirmed. Claimant voluntarily left the employment without good cause attributable to 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 benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw