

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEFFREY L NISSEN
Claimant

FAGEN INC
Employer

APPEAL 15A-UI-04348-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/15
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 6, 2015, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on May 13, 2015. The claimant participated. The employer participated through Jessica Savoie.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a millwright journeyman and was separated from employment on July 28, 2014, when he resigned verbally to his supervisor, J.R. Courtney.

The claimant was hired as a millwright worker, which does not include welding. He was responsible for installing machinery. In the final two or three weeks of work, the claimant was asked to scale scaffolding and brush wells all day. This is work traditionally for a welder, not a millwright. The claimant raised concerns with both his supervisor, J.R. Courtney and the foreman on site about asking why he and no other millwright worker had to perform assignments generally associated with welders. The employer told the claimant they were trying to get people in to take that job but did not remove him from the assignment. The claimant then resigned without notice as a result of the change in hiring conditions, which continued for several weeks. The employer does hire some people with multiple jobs but will designate them within their title as both. No evidence was presented by either the employer or claimant supporting the claimant was hired in any capacity to perform welding work or as a partial welder.

The employer's records reflect the claimant voluntarily quit as a result of three days of no-call/no-show in late July. Employer representative, Jessica Savoie, works at the corporate office and not on site where the claimant performed work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(23) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. In this case, the claimant was hired as a millwright journeyman and not a welder. He told his foreman and supervisor about his concerns with climbing scaffolding all day when he had been hired to perform other work. The employer testified it does sometimes hire employees in multiple divisions but there was no indication Mr. Nissen was hired to work in both welding and as a millwright journeyman. He performed the welder work for several weeks before resigning, giving the employer opportunity to respond. The credible evidence establishes the claimant's resignation for having to perform welder work several weeks when he was hired as a millwright was for good cause under Iowa law. Benefits are allowed.

DECISION:

The April 6, 2015, (reference 02) unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible and the benefits withheld shall be paid.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css