

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JOEL C YANDELL  
2674 "I" AVE  
HUBBARD NE 68741

GLOBAL ENGINEERING  
& CONSTRUCTION  
425 PERRY ST  
PO BOX 837  
SIOUX CITY IA 51102

RICHARD STURGEON  
PO BOX 3372  
SIOUX CITY IA 51102-3372

TIMOTHY BOTTARO  
ATTORNEY AT LAW  
PO BOX 1557  
SIOUX CITY IA 51102-1557

Appeal Number: 04A-UI-09415-CT  
OC: 08/01/04 R: 12  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Joel Yandell filed an appeal from a representative's decision dated August 23, 2004, reference 01, which denied benefits based on his separation from Global Engineering & Construction (Global). After due notice was issued, a hearing was held by telephone on October 13, 2004. Mr. Yandell participated personally and was represented by Richard Sturgeon, a non-attorney. The employer participated by Dave Yockey, Job Superintendent, and Gerald Larson, Project Manager. The employer was represented by Timothy Bottaro, Attorney at Law. Exhibits One through Four were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Yandell was employed by Global for approximately three years ending June 29, 2004. He was last employed full time as a foreman and laborer. On June 29, 2004, Mr. Yandell was involved in an argument with Mario, a coworker, who was interfering with Mr. Yandell's work. After Mario left, his brother-in-law, Joaquin Flores came up and struck Mr. Yandell in the face. The job superintendent saw the incident and yelled at both parties to stop fighting. Mr. Flores was retreating when Mr. Yandell struck him. Mr. Yandell left work because he had injured his hand in the incident.

On July 1, the employer met with Mr. Yandell and advised that both he and Mr. Flores would receive a written warning regarding the incident. Although fighting is prohibited by the employer's safety rules, neither Mr. Yandell nor Mr. Flores were going to be discharged as a result of fighting on the job as both were good, long-term employees. Mr. Yandell had not had any prior problems with Mr. Flores.

Mr. Yandell was off work for three weeks as a result of the injuries sustained on June 29. When released by his doctor, he returned to the employer and his job was still available to him. He advised the employer that he would not return unless the employer could guarantee that he would not be attacked at work again. He wanted Mr. Flores to be discharged for his part in the fight. The employer could not offer Mr. Yandell the guarantee he wanted and refused to discharge Mr. Flores. Therefore, Mr. Yandell quit.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Yandell was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Yandell had the burden of proving that his quit was for good cause attributable to the employer. Iowa Code section 96.6(2). He quit because the employer would not discharge the individual who had initiated a physical assault on him. There is no dispute as to who was the aggressor in the incident as the employer witnessed Mr. Flores throw the first punch. It was not unreasonable for the employer to give Mr. Flores a second chance in spite of his conduct, the same as a second chance was given to Mr. Yandell for his role in the altercation. Mr. Yandell was not acting in self-defense when he struck Mr. Flores as Mr. Flores was retreating from the incident. He knew that the superintendent had seen Mr. Flores' conduct and could have left it up to management to handle the matter without resorting to returning Mr. Flores' blow. Inasmuch as both parties were in violation of policy, the employer's decision to allow both to remain in the employment was not unreasonable.

The administrative law judge concludes that the employer's actions in warning both individuals and reinforcing to all employees that fighting on the job would not be tolerated was a reasonable effort to ensure the safety of the workers. Given the isolated nature of the incident between the parties, Mr. Yandell's role in the altercation, and the employer's response, Mr. Yandell's demand that Mr. Flores be discharged was unreasonable. For the above reasons, it is concluded that Mr. Yandell's quit was not for good cause attributable to the employer as the employer took immediate steps to address the situation which was causing him to quit. Accordingly, benefits are denied.

DECISION:

The representative's decision dated August 23, 2004, reference 01, is hereby affirmed. Mr. Yandell voluntarily quit his employment with Global for no good cause attributable to the 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf