

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY D MONAHAN
Claimant

APPEAL NO. 08A-UI-00903-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NID INC
Employer

OC: 12/23/07 R: 02
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

NID, Inc. filed an appeal from a representative's decision dated January 16, 2008, reference 01, which held that no disqualification would be imposed regarding Troy Monahan's separation from employment. After due notice was issued, a hearing was held by telephone on February 11 and February 14, 2008. Mr. Monahan participated personally and was represented by Max Schott, Attorney at Law. Exhibits A, B, and C were admitted on Mr. Monahan's behalf. The employer participated by Stephanie Gardner, Bookkeeper; Peter Gouge, President; Jeremy Gouge, Operations Manager; and Aaron Boyenga, Job Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Monahan was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Monahan was employed by NID, Inc. from August of 2006 until September 28, 2007. He was hired to work full time as a manager. In March of 2007, he sustained a work-related injury when he fell while cleaning the restroom at work. He injured his neck and left shoulder and elbow. He received medical attention but did not have any medical restrictions as of September of 2007.

On September 26, 2007, Mr. Monahan was assigned work that involved welding tubes under a trailer. He looked at the work and experienced some difficulty getting under the trailer but gave no indication that he was unwilling to perform the work. Before starting the job, he left for his physical therapy appointment. After his appointment, he picked up a load of steel and returned to the plant. At approximately 10:46 a.m., Mr. Monahan sent out an email indicating he was leaving for the day because he was not feeling well. He was sore from having undergone physical therapy. He called on September 27 to report that he would be absent. He was still sore from the physical therapy.

Mr. Monahan notified the physical therapist on September 26 that he experienced increased pain in his shoulder if he performed heavier tasks at work. He also reported increased shoulder pain when reaching away from his body or overhead and increased neck pain with activity. He also reported a recent onset of numbness and tingling in his hand. He was to have therapy two to three times each week for the following six weeks.

Mr. Monahan returned to work on September 28. The project he was assigned on September 26 had not been completed and he was again assigned to perform the work. He would not have been performing the task alone. He indicated to Peter Gouge that he did not feel he could physically perform the job as it involved tasks that would increase his pain. He also indicated that he was hired to be a manager, not to perform heavy labor. According to the statement prepared by Peter Gouge on September 28, "At that point he [Mr. Monahan] said he would not do that kind of work I said he need to reconsider the issue if I needed the help rebuilding what ever he would need to do it or consider another alternative." Mr. Gouge's statement goes on to state that Mr. Monahan said he would rather quit the job and would be in on Monday to get his toolbox.

Mr. Monahan had never refused to perform any task assigned to him. He had performed welding and other laborer's work during the course of his employment. He left the premises after the conversation with Mr. Gouge on September 28. When he came in on the following Monday to get his tools, he was asked to sign a resignation form but declined. In subsequent conversations with the employer's insurance carrier, Mr. Monahan indicated he had quit the employment.

REASONING AND CONCLUSIONS OF LAW:

The parties disagree as to whether the separation in this matter was a quit or a discharge. Mr. Monahan told Mr. Gouge that he would rather quit than perform the work assigned on September 28. Given this factor and Mr. Monahan's statements to the insurance carrier, the administrative law judge concludes that the separation was a quit. 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. Monahan quit because he was being required to perform work he felt physically unable to do and had notified the employer of this fact. It is true that he did not have any doctor-imposed medical restrictions at the time. However, he had notified the physical therapist on September 26 that he was having increased pain when he exerted himself at work. He reported increased pain when reaching away from his body and overhead, both of which would have been required in order to complete the work assigned to him on September 28. It is significant that Mr. Monahan reported these symptoms on September 26, prior to the conversation with Mr. Gouge on September 28.

The administrative law judge is satisfied that Mr. Monahan did, in fact, have physical symptoms that prevented him from performing the welding that required him to work under the trailer. Given the fact that he had performed non-managerial tasks in the past, the administrative law judge is not inclined to believe he would refuse to perform the work because he was a manager. The fact that he was cleaning the restroom in March is indicative of his willingness to perform whatever tasks required of him. The employer confirmed that he had never refused to perform work in the past, even if it was not managerial work.

Mr. Gouge told Mr. Monahan that he would need to perform whatever work was assigned to him or "consider another alternative." A reasonable interpretation of this statement was that

Mr. Monahan was required to perform the welding under the trailer as assigned. Inasmuch as the work would have aggravated his physical condition, his decision to quit was for good cause attributable to the employer. For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated January 16, 2008, reference 01, is hereby affirmed. Mr. Monahan quit his employment for good cause attributable to the employer. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs