

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

BRIAN K JOHNSON
Claimant

TRINITY CONSTRUCTION GROUP LTD
Employer

APPEAL NO. 23A-UI-05782-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/07/23
Claimant: Appellant (2)**

Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

On June 3, 2023, Brian Johnson (claimant) filed a timely appeal from the May 24, 2023 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on April 11, 2023 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 26, 2023. Claimant participated. Jackie Goode represented the employer. Joey Goode was available to testify on behalf of the employer but did not testify. Exhibits A, B and C were received into evidence at the time of the hearing. The administrative law judge left the hearing record open for the limited purpose of allowing the claimant additional opportunity to submit proof of employment and start date with Baker Interior Systems. The claimant provided a pay stub from Baker Interior Systems, which was received into evidence as Exhibit D.

ISSUES:

Whether the claimant voluntarily quit employment without good cause attributable to the employer.

Whether the claimant voluntarily quit for the sole purpose of accepting other or better employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brian Johnson (claimant) was employed by Trinity Construction Group, Ltd. as a full-time union trim carpenter from January 2023 until April 11, 2023, when he voluntarily quit to accept better employment with Baker Interior Systems. The claimant notified Trinity on April 11 that he had accepted employment with Baker and was quitting the Trinity employment. The claimant's quit was effective immediately. Trinity continued to have work for the claimant. At the time the claimant separated from the Trinity employment, Trinity experienced a temporary lull in business, which temporarily reduced the number of hours Trinity had for the claimant. The claimant left the Trinity employment shortly before that employer's busy season was set to begin. The claimant began the Baker employment on or about April 12, 2023. The new employment provided a higher wage and more consistent work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

The evidence in the record indicates that the claimant voluntarily quit employment with Trinity Construction Group, Ltd. on April 11, 2023 for the sole purpose of accepting better employment with Baker Interior Systems. The quit from Trinity was without good cause attributable to that employer. Trinity's employer account will not be charged for benefits. Because the quit from Trinity was to accept other employment, the quit from Trinity did not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

DECISION:

The May 24, 2023 (reference 01) decision is REVERSED. The claimant voluntarily quit employment with Trinity Construction Group, Ltd. on April 11, 2023 for the sole purpose of accepting better employment with Baker Interior Systems. The quit from Trinity was without good cause attributable to that employer. Trinity's employer account will not be charged for benefits. Because the quit from Trinity was to accept other employment, the quit from Trinity did not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided he meets all other eligibility requirements.



James E. Timberland
Administrative Law Judge

June 30, 2023
Decision Dated and Mailed

jet/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.