

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SILVESTRE VILCHEZ
Claimant

APPEAL NO. 07A-UI-08326-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CON-STRUCT INC
Employer

**OC: 11/26/06 R: 02
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Sylvestre Vilchez filed an appeal from a decision of a representative dated August 29, 2007, reference 02, which denied benefits based upon his separation from Con-Struct Inc. After due notice was issued, a hearing was held by telephone on September 17, 2007. Mr. Vilchez participated personally. The employer although notified did not participate. Participating as the official interpreter was Ms. Susie Jaquez.

ISSUE:

At issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from August 2006 until July 26, 2007 when he voluntarily left employment due to dissatisfaction with a directive given by his supervisor. Mr. Vilchez worked as a general laborer/vehicle driver. He was employed on a full-time basis as paid by the hour. The claimant's supervisor was Kenny (last name unknown).

Mr. Vilchez left his employment on July 26, 2007 because his supervisor had asked Mr. Vilchez to use Mr. Vilchez's personal truck to transport one or more employees to a different job locale that day. The claimant refused. In the usual course of events, employees reported to the employer's facility and then were transported to jobsites using company trucks or other company transportation. Prior to leaving employment Mr. Vilchez did not question his supervisor as to why the request was being made that day. The claimant also did not go to any upper management and complain or determined whether the request was an isolated situation. Mr. Vilchez did not personally recontact the company. The following Monday he had other workers report for him that he was "ill." It is the claimant's position that he has been unable to work for approximately two months due to a pinched nerve.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant has not established good cause for voluntarily quitting his job for reasons that were attributable to the employer. Mr. Vilchez was given the option of driving his personal vehicle from the company's shop to a jobsite that day or leaving employment. Without questioning his supervisor further or going to upper management, the claimant simply left the jobsite and did not report again or directly notify the employer again. The evidence does not establish whether Mr. Vilchez was being asked to transport himself and one or more employees a substantial distance or a very short distance. The record also does not establish whether the employer had compelling reasons for making the request on that day. The claimant acknowledges that the company normally expects employees to personally contact the company to report impending absences, and agrees that he did not do so following July 26, 2007.

Iowa Code section 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.

For the reasons stated herein the administrative law judge finds that the claimant had not exhausted reasonable alternatives available to him prior to leaving his employment. The claimant did not question his supervisor further or attempt to remain employed by bringing the matter to the attention of higher management. As the employer was not given a reasonable opportunity to explain or remedy the cause of the claimant's job dissatisfaction, the administrative law judge finds that the claimant's leaving was not attributable to the employer.

There may be a question regarding the claimant's availability based upon his testimony that he has been unavailable for work for approximately two months due to a back condition and is not seeking employment. This matter may be a subject of an investigation issue and issuance of an availability determination on the part of Iowa Workforce Development.

DECISION:

The representative's decision dated August 29, 2007, reference 02, is hereby affirmed. The claimant quit for reasons that were not attributable to the employer. Benefits are withheld until

the claimant has worked in and earned wages equal to ten times his weekly job insurance benefit amount, providing that he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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