

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JOEL R SIMPSON

Claimant,

and

10TH STREET LOFTS LLLP

Employer.

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HEARING NUMBER: 14B-UI-14035

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Joel R. Simpson, worked for 10th Street Lofts, LLLP beginning March 20, 2013 as full-time building maintenance. (40:04-39:25; 24:10-23:44) At or around May 15, 2013, the Claimant approached the Employer about a friend who had just started up a printing business. (21:16) Mr. Simpson had previously worked in the printing industry and decided to work for his friend. (21:14-21:10; 17:39-17:27) He verbally gave the Employer his two-week notice to resign that same day. (33:20-33:00; 23:38; 21:17; 17:06; 15:04; 11:33-11:22)

In the interim, Mr. Simpson suffered a non-work-related ankle injury on May 26th (12:56; 12:19) for which he informed the Employer that he was unable to work. (38:48-38:35; 21:03; 15:51-15:39; 15:27) He did not return to work; his last day with 10th Street Lofts was May 24, 2013, the previous Friday. (12:45-12:25) While working for the Employer, the Claimant received direct deposit for his paychecks. (27:40)

Sometime in early June of 2013, Mr. Simpson applied for assistance through the Department of Human Services; on his application, it indicated that he had worked for the Employer until he quit on May 24, 2013. (20:06; 7:42-7:30) There was no indication that he ever worked for his friend's printing company. (20:45)

Mr. Simpson resolved his injury by the end of August and returned to the Employer seeking additional work. (38:29-36:18) The Employer had nothing at that point, but contacted the Claimant via Jeff Null on September 9th with news of a subcontracting job with one of its contractors (Steve Davis) beginning the following day. (36:03-35:30; 30:21-29:45; 29:16-28:51; 28:48-28:31; 21:43-21:26) Mr. Simpson reported to Mr. Davis on a daily basis. (28:23-28:08; 21:48) He received two paychecks for which he signed a document which established he was an employee of Rolling Hills Enterprises, and not an employee of 10th Street Lofts. (27:19-26:26; 23:16-22:56) The Claimant did not understand the significance of this document. (26:25-25:53) The Claimant worked this job until completion on November 1, 2013. (35:09-34:53)

He filed for unemployment benefits on November 3, 2013.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2013) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5...

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

The record establishes that Mr. Simpson, initially, worked for the Employer beginning March 20th. He had already put in for his resignation when he later became injured off the job, but before his intended resignation date. Although the Claimant argues that he didn't intend to quit until June 24th, the Employer provided credible testimony that he gave a two-week notice, which would have made his final day the end of May. And even assuming arguendo that the Claimant's final date was June 24th, he would not be eligible for benefits based on his inability to work due to his injury (for either date), which both parties acknowledge that he contacted the Employer to report that he would not be able to return to work. (38:48-38:35; 21:03; 15:51-15:39; 15:27) His release date (September 1, 2013) happened long after his resignation date. Thus, our focus is on the reason for his quit from his employment with 10th Street Lofts.

Mr. Simpson intended to sever his employment relationship with 10th Street Lofts to accept new employment. (33:20-33:00; 23:38; 21:17; 21:14-21:10; 17:06; 17:39-17:27; 15:04; 11:33-11:22) And

although both parties agree the reason for the quit was because he was going to accept other employment, such a quit would not necessarily disqualify him.

Iowa Code section 96.5(1)(a) (2013) provides:

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.

However, the evidence supports that he never worked for his friend. (20:45) Rather, he accepted a job months later with another employer, Rolling Hills Enterprises, which he learned about through his previous Employer (10th Street Lofts). (36:03-35:30; 30:21-29:45; 29:16-28:51; 28:48-28:31; 21:43-21:26) This was not the employment for which he left 10th Street Lofts. Based on this record, we conclude that the Claimant quit his employment without good cause attributable to this Employer.

DECISION:

The administrative law judge's decision dated January 16, 2013 is **REVERSED**. The Employment Appeal Board concludes that the claimant voluntarily quit his employment without good cause attributable to the Employer. Accordingly, he is denied benefits until such time he has worked in and was paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(1)"g".

We would also note that a portion of the Claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

Monique F. Kuester

Cloyd (Robby) Robinson