

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS A BLAZEK
Claimant

APPEAL NO. 13A-UI-06272-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY CONSTRUCTION GROUP LC
Employer

OC: 04/28/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 16, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, a hearing was held on July 2, 2013, by telephone conference call. The claimant participated personally. The employer participated by John Timeyer, President; Lorna Kruger, Office Manager; Richard Mills, Superintendent; and Ryan Engrave, Foreman. The record consists of the testimony of Marcus Blazek; the testimony of John Timeyer; the testimony of Richard Mills the testimony of Ryan Engrave; and the testimony of Lorna Kruger.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a commercial general contractor. The claimant started working for the employer in August 2012. He was a full-time foreman. His last day of work was April 9, 2013, when he walked off the job. He quit on August 10, 2012.

The employer has a job doing renovation work for the University of Iowa library. Beneath the first floor of the library is an interstitial space that contains some concrete beams and duct work. The ceiling is six feet high although the height is reduced in certain spots by the duct work. The space has been present since the building was constructed in 1955. The University of Iowa regularly tests for air quality in the space. The last test done before the claimant quit was on December 12, 2012. In addition, OSHA has inspected the area when it came to check on the job site for another contractor. The employer also hires a company to monitor on a monthly basis and point out any safety problems so that the employer can address them and correct them. No concerns were raised by any of these entities about the safety of the workplace.

In early April, the claimant and the superintendent, Richard Mills, had a heated discussion about where a hole needed to be drilled. Mr. Mills instructed the claimant to drill the hole where the mechanical contractor said it should be drilled. The claimant thought it should be in another place and actually put the hole where he thought it should be. This was a mistake and it cost the employer approximately \$1,500.00 to repair. Other workers on the site who worked for other contractors were razzing the claimant about it and he got upset.

On April 9, 2013, the claimant said he was dizzy and did not feel good. He was told that he needed to go immediately to occupational health and that another employee would drive him there. The claimant refused. He smoked a cigarette and then got into his car and drove to the hospital. He claims that his lungs were pumped out and that he was in the hospital for four hours. He believes it was due to dust in the space that he was cleaning up.

On April 10, 2013, the claimant met with the company president, John Timeyer, and Richard Mills to work out the situation. Lorna Kruger was also present. The claimant had not gone to occupational health as he had been directed to do and Mr. Mills told the claimant he would have to write him up for that. The claimant got very angry and Mr. Mills was asked to leave by Mr. Timeyer. Mr. Timeyer offered the claimant other jobs where he would not have to work with Mr. Mills but the claimant refused. He said he was quitting.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(6), (21) and (22) provide:

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. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The claimant is not eligible for unemployment insurance benefits. The overwhelming weight of the credible evidence in this case is that the claimant quit his job and he did so without good cause attributable to the employer. The findings of fact show how the credibility issues were decided in this case. Mr. Timeyer's testimony was particularly persuasive and what he said about the testing and safety of the space where the claimant was working was corroborated by Mr. Mills and Mr. Engrave. The claimant provided no documentary evidence that he was indeed injured by the inhalation of dust in the interstitial space. Mr. Engrave also worked in the space and he did not feel it was unsafe nor did he need to even use a dust mask. The most reasonable inference from the evidence is that the claimant did not want to work for the employer at all. Had his only concern been the air quality of the space, he would have taken another job as offered by Mr. Timeyer. The fact that he refused other jobs convincingly shows that the claimant quit for personal reasons not caused by the employer. Benefits are denied.

DECISION:

The decision of the representative dated May 16, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css