

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

PHILIP J MONTANDON
11568 – 120TH ST
ALDEN IA 50006

IOWA FALLS ROOFING CO
PO BOX 157
IOWA FALLS IA 50126-0157

Appeal Number: 05A-UI-06524-DWT
OC: 12/05/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Philip J. Montandon (claimant) appealed a representative's June 14, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Iowa Falls Roofing Company (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2005. The claimant participated in the hearing. Randy Smith, the president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2002. From December 13, 2003 through January 2004, the claimant was on a layoff. He filed for and received unemployment insurance benefits during these weeks.

The claimant had to have his appendix removed and informed the employer of his upcoming surgery. The claimant's last day of work for the employer was November 24, 2004. He had his appendix removed in Iowa the week of December 5, 2004. The claimant was released from the hospital one day after his surgery. His doctor told him to take it easy for couple of weeks. From December 5 through December 25, the claimant was not working because of the surgery he had and recuperation time. For all practical purposes, the claimant was on a medical leave of absence these weeks.

After the claimant recuperated, he decided to go to California to visit his family. The claimant left Iowa on December 24, 2004. The claimant also went to California because he did not again want to come down with pneumonia during the winter. The claimant planned to be gone about six weeks, but did not return until March 2005. Employees who worked with the claimant worked 40 or more hours the weeks ending December 4, 11 and 23. Employees worked less than 10 hours during the weeks ending December 18, 2004, January 1, 8, 15 and 22. During the week ending January 29, employees worked 22.5 hours.

At various times in December, January, February and March, the claimant contacted the roofing foreman that supervised him to find out if the employer had work for the claimant to do. The claimant did not have specific dates that he called the roofing foreman. The claimant received information that the employer's business was slow and he did not need to return to work yet. When the claimant returned to Iowa in March, he again contacted the roofing foreman to find out when he could return to work. The owner, however, received information that the claimant had not kept in contact with his roofing foreman.

Sometime between March and early June 2005, the claimant worked for a masonry company and hurt his back. After the claimant hurt his back, he did not continue his employment with the masonry company. In May 2005, the employer received information the claimant was looking for work and contacted him about returning to work. The claimant returned to work in early June 2005. The claimant no longer works for the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Initially, the claimant did not work after November 24 because of Thanksgiving and he was scheduled to have his appendix removed the week of December 5, 2004. The employer knew the claimant needed the surgery and would be off work for a while. From December 5 through 25, the claimant was on a

medical leave. When a claimant requests a leave, the law considers him to be voluntarily unemployed. 871 IAC 24.22(2)j.

After the claimant recovered from his surgery, he decided to go to California. When the claimant went to California on December 24, the employer's work had slowed down to the point employees worked less than ten hours a day until the week of January 23, 2005. The claimant's failure to contact the employer, Randy or Sandy Smith, before he left for California but was released to work amounts to a voluntary quit. At that time the claimant essentially decided he wanted to go to California to be with his family and enjoy warmer weather. The fact the claimant intended to quit as of December 24 is supported by the fact the claimant did not return to Iowa until March and then accepted a job with a masonry company. Since the claimant became voluntarily unemployed as of December and then quit, he is disqualified from receiving unemployment insurance benefits as of December 5, 2004.

Since the claimant worked for the employer in May and/or June 2005, the reasons for this employment separation must be remanded to the Claims Section.

DECISION:

The representative's June 14, 2005 decision (reference 01) is affirmed. The claimant became voluntarily unemployed when he needed time off for surgery and to recover. As of December 26, 2004, the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 5, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

The claimant worked again for the employer in May and/or June 2005. The reason for this employment separation is remanded to the Claims Section to investigate and issue a written decision.

dlw/pjs