

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD LADAMS
Claimant

APPEAL NO. 11A-UI-15604-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

D & B ARGO-SYSTEMS
Employer

**OC: 10/30/11
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Donald Adams (claimant) appealed a representative's December 1, 2004 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with D & B Argo Systems (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 5, 2012. The claimant participated personally. The employer participated by Justin Minter, Vice President/Owner; Steve Doering, Vice President/Owner; and Dennis Williams, Laborer.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether he is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 9, 2011, as a full-time master electrician. At the interview he understood that he would have to commute 70 miles one way to work. The employer told the claimant he could take the company truck home with him at night when performing work close to his residence. The claimant understood that he would be paid \$20.00 per hour and the amount would be reviewed after 90 days. The employer told the claimant that during harvest time he would work long shifts. The claimant accepted the position.

During his employment he worked 12 to 14 hour shifts during harvest time. He received a pay increase to \$22.00 an hour in August 2011. He did not fill out his paperwork properly which resulted in his not being paid during his lunch time. He worked with a laborer who smoked. The laborer was under the claimant's direction and complied with the claimant's instructions. Even so, the claimant thought the laborer was unsafe. The claimant complained to the employer and the employer investigated. No safety issues were found. The claimant allowed the laborer, who was an unclassified person, to work under his supervision. The laborer thought the claimant disliked him because he was much younger than the claimant but knew some things the

claimant did not. The claimant performed hot work without the employer's knowledge and without the proper clothing. He also performed work at job sites that he thought the employer had not obtained the proper permits. The employer had obtained the proper permits. The employer notified the claimant that he would not be paid an hourly wage while commuting to work in the work vehicle.

On October 4, 2011, the claimant worked. On October 5, 2011, the claimant notified the employer that he was too tired to work. On October 6, 2011, the claimant sent the owners a text that said: \$25.00 per hour...truck to and from job...10 to 12 hour shifts max...lunch time paid back...call if you want an electrician. Continued work was available had the claimant not resigned. The employer paid the claimant for his lunch time even though the paperwork was incorrectly completed.

The claimant stated at the hearing that he resigned because it was too far to commute, he wanted a higher wage, he wanted to be paid when commuting to work, he thought the shifts were too long, he wanted pay for his lunch times that he did not complete the proper paperwork, he did not want to work with a non-licensed laborer, he wanted to be assured there were permits for job sites, he did not want to perform hot work without the employer providing proper clothing, and he wanted the employer to reprimand the laborer for smoking at work and violating safety rules. The claimant did not notify the employer prior to his separation that these conditions were intolerable to him.

Immediately after the separation the claimant became a self-employed electrician. He has a website and continues to seek work as a self-employed electrician.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental

working conditions. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant did not notify the employer of all the conditions for which he quit. The conditions that he believes were intolerable or detrimental are the commuting distance, his wage, payment for commuting to work, length of shifts, payment for improperly documented lunch times, working with a non-licensed laborer, lack of work permits, lack of proper clothing for hot work, and failure to reprimand another worker. The claimant subsequently quit due to those conditions. The conditions the claimant notified the employer in his text were the wages, a truck to commute in, length of shift and payment for lunch. The claimant did not notify the employer of his fear of losing his license due to his work environment.

Inasmuch as the claimant did not give the employer an opportunity to resolve his complaints regarding licensure prior to leaving employment, the separation was without good cause attributable to the employer. The employer was unaware of the claimant's concerns.

871 IAC 24.25(13) 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. 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). In the absence of agreement to the contrary, an employer's failure to pay wages when due constitutes good cause for leaving the employment. Deshler Broom Factory v. Kinney, 140 Nebraska 889, 2 N.W.2d 332 (1942). When an employee quits work because the employer did not pay wages when they were due without an agreement to the contrary, his leaving is with good cause attributable to the employer. In this case the claimant was not paid lunch wages because he did not complete the documentation correctly. The employer paid the claimant for his lunches even though the claimant improperly completed the forms. The administrative law judge finds that the employer did not fail to pay the claimant monies owed. When an employee quits work because he is dissatisfied with his wages and knew the rate of pay when hired, his leaving is without good cause attributable to the employer. One of the reasons the claimant left work is that he wanted the employer to give him a raise. The claimant knew the rate of pay at the time he started work and had already received a raise.

871 IAC 24.25(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:

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

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

871 IAC 24.25(18) 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. 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:

(18) The claimant left because of a dislike of the shift worked.

When an employee quits work because he is dissatisfied with the work environment, has a personality conflict with his co-worker or did not like the hours he worked, his leaving is without good cause attributable to the employer. The issues that comprise the claimant's description of an intolerable or detrimental workplace when taken individually are presumed to be without good cause attributable to the employer. The claimant voluntarily quit work without good cause attributable to the employer

871 IAC 24.23(7) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(7) Where an individual devotes time and effort to becoming self-employed.

When an employee is devoting time and effort to being self-employed, he is considered to be unavailable for work. The claimant was devoting his time and efforts to his own electrical business. He is considered to be unavailable for work after October 6, 2011. The claimant is disqualified from receiving unemployment insurance benefits beginning October 6, 2011, due to his unavailability for work.

DECISION:

The representative's December 1, 2011 decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant is disqualified from receiving unemployment insurance benefits beginning October 6, 2011, due to his unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css