

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LESTER SMALL
Claimant

APPEAL NO. 09A-UI-06666-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

**Original Claim: 04/05/09
Claimant: Respondent (2)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Menard, filed an appeal from a decision dated April 27, 2009, reference 01. The decision allowed benefits to the claimant, Lester Small. After due notice was issued, a hearing was held by telephone conference call on May 26, 2009. The claimant provided a telephone number to the Appeals Section. That number was dialed at 2:00 p.m. and the only response was a voice mail that was clearly identified as belonging to Lester Small. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 2:12 p.m., the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Human Resources Coordinator Andrew Schrader and Assistant Electrical Manager Ronald Buch and was represented by corporate counsel Landon Pelkola.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Lester Small was employed by Menard from July 29 until November 14, 2008 as a part-time morning stocker. His last day of work was November 10, 2008, and he was no-call/no-show to work for the next three days. He had received a copy of the employee handbook, which states three days' no-call/no-show will be considered a voluntary quit.

Lester Small filed a claim for unemployment benefits with an effective date of April 5, 2009. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The record establishes the claimant was a voluntary quit without good cause attributable to the employer under the provisions of the above Administrative Code section. He is disqualified from receiving unemployment benefits.

DECISION:

The representative's decision of April 27, 2009, reference 01, is reversed. Lester Small is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw