

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS E CALEY
Claimant

APPEAL NO. 10A-UI-13358-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 08/15/10
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 21, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on November 10, 2010. Claimant participated. Jim Hook represented the employer.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker from October 2009 and last performed work for the employer on May 22, 2010. On May 25, and 26, and June 1, and 2, 2010, the claimant was absent due to illness properly reported. On June 7, 8, 9, 13, and 15, the claimant was absent and failed to notify the employer. The employer's policy required that the claimant telephone the employer at least 30 minutes prior to scheduled start of your shift and to make such contact every day the claimant was absent from work. Under the collective bargaining agreement that governed the claimant's employment, five no-call, no-show absences were deemed a voluntary resignation. After the claimant ceased notifying the employer of his absences, the claimant did not make any further contact with the employer until July.

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.

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.

When a worker is absent for three days without giving notice to employer in violation of company rule, the worker is presumed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4).

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. The weight of the evidence establishes that the claimant was absent five consecutive work days without notifying the employer in violation of the employer's policy. The weight of the evidence indicates that the claimant had the ability to notify the employer of the absences. The claimant's health issues at the end of June would have had no effect on these five no-call, no-show absences that led to the separation from the employment. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

DECISION:

The Agency representative's September 21, 2010, reference 02, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw