

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRANCE P KELLY
Claimant

APPEAL NO. 09A-UI-09811-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUTOMOTIVE ENTERPRISES COMPANY
Employer

OC: 06/07 09
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 9, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 23, 2009. Employer participated by Steven Whalen, Owner and President. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Steven Whalen.

After the hearing was concluded and the record was closed, the claimant did call in. He did not offer an explanation on why he did not respond to the hearing notice. No good cause was shown for reopening the record.

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 witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case does polishing and chrome plating for the motorcycle industry. The claimant was hired on November 2, 2006, as a metal polisher.

On June 3, 2009, the claimant was scheduled to work until 5:00 p.m. The claimant left at 3:30 p.m. and did not return to work. On June 5, 2009, he showed up at work to collect his paycheck and informed the office staff that he had already filed for unemployment benefits.

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.

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 evidence in this case established that the claimant intended to sever the employment relationship and did so by abandoning his job. He left work early on June 3, 2009, and came back to collect his check on June 5, 2009. He informed the employer that he had already been to the unemployment office. No evidence was offered to show that the claimant quit with good cause attributable to the employer. Benefits are denied.

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The claimant did not comply with the hearing notice and therefore was not called for the hearing. The claimant called after the hearing was concluded and the record was closed. The claimant admitted that he had not complied with the hearing notice despite having received it. No reason was given by the claimant for his failure to provide a telephone number or participate prior to the conclusion of the hearing. Accordingly, the administrative law judge declined to reopen the record.

DECISION:

The decision of the representative dated July 9, 2009, 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 benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css