

**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**

**DENNIS J MILLER
2065 IDAHO PL
OSCEOLA IA 50213**

**SPECIAL PACKAGING INC
PALLETON OF IOWA
511 S WARREN AVE
OSCEOLA IA 50213**

**Appeal Number: 05A-UI-02568-JTT
OC: 02/06/05 R: 03
Claimant: Appellant (2)**

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
871 IAC 24.22(2)(j) – Re-employment at End of Leave of Absence
Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Dennis Miller filed a timely appeal from the March 4, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 6, 2005. Mr. Miller participated in the hearing. Don Fleming represented the employer. Exhibits One through Four, A and B were received into evidence.

FINDINGS OF FACT:

Dennis Miller was employed by Palleton of Iowa as a full-time lead person until January 28-31, 2005, when Plant Manager Ron Stout terminated the employment under the employer's policy regarding consecutive "no-call, no-shows." Mr. Miller had commenced the employment on September 13, 2001 as a builder. Mr. Miller's regular scheduled hours were 7:00 a.m. to

3:30 p.m., Monday through Friday. On Sunday, January 9, Mr. Miller suffered injury to his back while pushing a car out of a ditch. Despite the injury, Mr. Miller returned to work the next day. Mr. Miller last worked a shift for the employer on Tuesday, January 11. On Wednesday, January 12, Mr. Miller was a "no-call, no-show." However, Mr. Miller's roommate, who was also co-worker, informed Plant Manager Ron Stout that Mr. Miller had hurt his back in a non-work-related injury. Mr. Miller was off work due to the back pain. On Thursday, January 13, Mr. Miller again was a "no-call, no-show." On this date, Mr. Miller consulted a chiropractor. On Friday, January 14, Mr. Miller was again a "no-call, no-show." Mr. Miller again stayed home due to back pain. However, while he was off work due to back pain, Mr. Miller decided to burn some trash, slipped on ice and caught his hand on fire. Mr. Miller suffered serious burns to his hand. Mr. Miller was again a "no-call, no-show" on Monday-Tuesday, January 17-18.

On January 19, Mr. Miller went to the place of employment and showed Office Manager Lana Macey his hand. The hand was not actually bandaged, but instead had a piece of cloth wrapped around it. Mr. Miller advised Ms. Macey that he was not certain when he would be able to return to work. Mr. Miller did not inform Ms. Macey of the nature of the injury to his hand, but it was apparent to Ms. Macey that Mr. Miller could not perform his duties with the injured hand. Mr. Miller and Ms. Macey discussed that Mr. Miller had accrued vacation time. Ms. Macey provided Mr. Miller with a check for his accrued vacation pay. Plant Manager Ron Stout was also in the office at the time. Mr. Stout instructed Mr. Miller to keep the employer updated on his condition and expected date of return to work. Mr. Stout expected Mr. Stout to remain in "regular" contact with the employer. The employer did not have a contact telephone number for Mr. Miller.

On January 28, the employer had not again heard from Mr. Miller and terminated the employment as a voluntary quit pursuant to its policy regarding consecutive "no-call, no-shows." On January 31, the employer hired a replacement for Mr. Miller.

On February 3, Mr. Miller made contact with the employer and provided a doctor's excuse for January 24 through February 2. The excuse was dated January 31. The doctor's excuse did not cover any days prior to January 24. Mr. Stout advised Mr. Miller that the employer had terminated under the provision regarding consecutive "no-call, no-shows," hired a replacement, and that Mr. Miller's lead person position was no longer available. Mr. Stout instructed Mr. Miller to check back to see whether the new person was working out. Mr. Miller checked back in two weeks. Mr. Stout advised Mr. Miller that the employer had no openings. Mr. Miller advised Mr. Stout that he had applied for unemployment insurance benefits.

The employer has a written attendance policy set for in an "Employee Guide." Mr. Miller received a copy of the handbook and signed an acknowledgment that he had read and understood the contents of the "Employee Guide." The attendance policy contains the following provision: "If you are absent for two (2) consecutive working days without notifying your supervisor and without an approved leave of absence, you will be considered to have voluntarily resigned." This was the provision under which the employer terminated Mr. Miller's employment. The attendance policy contains the following additional provision: "Excessive absences, even excused absences, as determined in the sole discretion of the Company may result in dismissal from employment."

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Miller voluntarily quit the employment by being a “no-call, no-show” for consecutive shifts, or whether Mr. Miller was on an approved leave of absence, at the end of which the employer failed to re-employ him.

An individual who voluntarily quits employment is disqualified for unemployment insurance benefits unless the evidence establishes that the quit was for good cause attributable to the employer. See Iowa Code section 96.5(1). An individual who is absent from work without notifying the employer for *three* consecutive days is *presumed* to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4). 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).

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(2)(j)(2).

In reaching a decision in this matter, the administrative law judge is guided by the public policy statement of the Iowa Legislature set forth at Iowa Code section 96.2. Pursuant to this policy, courts are to construe the provisions of the unemployment compensation law liberally, and to interpret the unemployment compensation law's disqualification provisions strictly, to further the purpose of the law. See Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85 (Iowa 1997).

The evidence in the record establishes that, at least until January 19, the employer and Mr. Miller both still considered Mr. Miller an employee. The evidence further establishes that on January 19, Mr. Miller commenced an approved leave of absence of indefinite duration that both parties understood would end when Mr. Miller's hand healed sufficiently for him to return to work. On January 28, the employer terminated the leave of absence and the employment without notifying Mr. Miller that it intended to do so. Within a week, Mr. Miller presented himself to the employer with a doctor's excuse and offered his services. However, no employment was available. Mr. Miller neither indicated an intention to sever the employment nor evidenced such intent through his conduct.

Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that Palleton of Iowa failed to re-employ Mr. Miller at the end of a negotiated leave of absence. Accordingly, Mr. Miller is considered laid off and is eligible for benefits, provided he is otherwise eligible.

A person who is otherwise eligible for unemployment insurance benefits, must also be physically able to work and available to work. See Iowa Code section 96.4(3). The evidence in the record establishes that Mr. Miller was able and available for work as of February 3, 2005, but was not able and available for work prior to that date.

DECISION:

The Agency representative's decision dated March 4, 2005, reference 01, is reversed. The employer failed to re-employ the claimant at the end of a negotiated leave of absence. The claimant is eligible for benefits, provided he is otherwise eligible. The claimant has been able and available for benefits since the effective date of the claim. The employer's account may be charged for benefits paid to the claimant.

jt/pjs