

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN REYNOLDS

Claimant

APPEAL NO: 12A-UI-13983-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

CASEY'S GENERAL STORES

Employer

OC: 10/21/12

Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause
Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Dustin Reynolds (claimant) appealed an unemployment insurance decision dated November 14, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Casey's Marketing Company (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2012. The claimant participated in the hearing. The employer participated through Manager Deb Tendal. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

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 employed as a part-time cook from June 18, 2010 through September 23, 2012 when he was considered to have voluntarily quit. His last day of work was September 20, 2012 and he worked less than two hours before he walked off the job after saying something like, "I don't feel real good, I'm leaving."

The claimant did not contact the employer again until after two weeks, at which time he called in and said he wanted to work. He did provide a medical excuse to the employer five or six days after it was written on September 25, 2012. The medical note excused him from work the past week and through October 1, 2012. The claimant brought the note in to give to the manager but never spoke with her until he called in after that.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when he walked off the job on September 20, 2012 and failed to call or return to work after that for at least two weeks.

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 § 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 § 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 claimant was deemed a voluntary quit on September 23, 2012 after three days of no-call/no-show. It is his burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant failed to meet that burden and his separation was without good cause attributable to the employer.

In the alternative, the separation could also be characterized as a discharge, in which case, the employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant would have had a job if he would have only communicated with the employer. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Excessive absences are not misconduct unless unexcused though and absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant's multiple no-call/no-shows demonstrate a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has also been established and benefits are denied.

DECISION:

The unemployment insurance decision dated November 14, 2012, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are

withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css