

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERALD A PAYNE
Claimant

APPEAL NO: 13A-UI-04146-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 02/24/13
Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Jerald Payne (claimant) appealed an unemployment insurance decision dated March 28, 2013, reference 02, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Nordstrom, Inc. (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 May 20, 2013. The claimant participated in the hearing with representative Jane Caraway, his former teacher. The employer participated through Ryan Icorn, Human Resources Assistant; Travis Cavros, Assistant Manager Packaging & Shipping; and Tom Kuiper, Employer Representative. Claimant's Exhibit A was admitted into evidence. 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 full-time order packer November 14, 2011 through January 7, 2013 when he called his supervisor and voluntarily quit his employment. The employer's attendance policy provides that employees receive a written warning once they accumulate seven attendance points. Partial points are issued for tardiness and leaving early and full points are issued for absences. If an employee is absent due to illness for three consecutive days, only one point is assessed as it is considered a continuation.

The claimant had a long record of absences in which he gained full and partial points but also had numerous months in which he had perfect attendance so had numerous point deductions. In December 2012, he was late seven times and left early once. The claimant's last day of work was December 31, 2012 and he called in sick on January 2, 3 and 4, 2013. Supervisor Travis Cavros advised him on January 4, 2013 that he would need to sign a written warning when he

returned to work. The claimant called in on January 7, 2013 and told his supervisor that he voluntarily resigned out of concern for not making the attendance policy.

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 by telling his supervisor he quit on January 7, 2013.

The claimant contends he was discharged but the evidence does not support that contention. However, when questioned during the hearing, he could not remember specific details from January 2013 because he said he did not know he would be expected to remember the information. The claimant's written statement, which lists the last days of employment, contradicts the evidence presented by the employer but the employer's evidence is more reliable since it is based on time records, building entry records and surveillance records.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated March 28, 2013, reference 02, 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/tll