

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIM THOMAS**

Claimant

**APPEAL NO. 07A-UI-00460-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPEEDCO TRUCK LUBE**

Employer

**OC: 12/17/06 R: 04  
Claimant: Appellant (5)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Tim Thomas (claimant) appealed an unemployment insurance decision dated January 8, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he had voluntarily quit his employment with Speedco Truck Lube (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 January 30, 2007. The claimant participated in the hearing with Tracy Hedgepeth. The employer participated through Michael Harland, General Manager. 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 tire pro from March 3, 2005 through November 20, 2006, which was the last day he worked. He started using drugs after that and was in and out of treatment facilities until finally going in-patient from November 29, 2006 through December 27, 2006. Contradictory and inconsistent testimony was presented by both parties as to the dates of contact between the claimant or his girlfriend and the employer. The employer considered the claimant to have voluntarily quit after three days of no-call/no-show, but the specific days kept changing during the testimony. Ultimately, the employer considered the three days of no-call/no-show to be November 25, 26 and 27. The claimant eventually admitted neither he nor his girlfriend called the employer on November 25, 28 and 29. The claimant never submitted any medical documentation to the employer to explain his absences until he completed treatment on December 27, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He 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 failing to call or report to work for three days in violation of policy. Although none of the witnesses who testified at the hearing were found credible because of repeated inconsistencies in their testimony, the facts do show the claimant did miss a minimum of three days without calling or reporting to work. The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without giving notice to the employer in violation of company rule. 871 IAC 24.25(4).

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 and benefits are denied.

**DECISION:**

The unemployment insurance decision dated January 8, 2007, reference 01, is modified with no effect. 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw