

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHEN M MCLEOD**  
Claimant

**APPEAL NO. 12A-UI-06786-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARR-NUNN TRANSPORTATION INC**  
Employer

**OC: 05/20/12**  
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated June 6, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 2, 2012. The claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Stephen McLeod and Claimant's Exhibit A.

**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 claimant worked for the employer as an over-the-road driver. He began working for the employer on June 1, 2008. The claimant's actual last day of work was May 10, 2012.

The claimant had been on the road since April 17, 2012. He was working for a total of 24 days. For every day that the claimant was on the road, he was entitled to 1.5 days off. The claimant was supposed to be off work from May 11, 2012, through at least part of May 15, 2012. The claimant called his employer on May 16, 2012, to find out about his next load. He was informed that he had been terminated. According to the termination letter dated May 18, 2012, the claimant was terminated for failing to report for work on May 14, 2012. (Exhibit A)

**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 representative set this decision up as a voluntary quit on May 17, 2012, for failing to report to work for three days in a row and not notifying the employer. There is no evidence for this conclusion. The claimant's termination letter clearly states that the claimant was terminated for not reporting to work on May 14, 2012. Based on the employer's own letter, the claimant was terminated for a single absence. This is not a voluntary quit, nor is there evidence of misconduct. Even if the claimant was absent without permission on May 14, 2012, a single absence is not misconduct. The claimant credibly testified that he was not required to be at work on May 14, 2012. There being no evidence that the claimant quit or that he was terminated for misconduct, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated June 6, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw