

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENNIS G COOK
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL 16A-UI-07133-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/29/16
Claimant: Respondent (4)

Iowa Code § 96.5(1)g – Voluntary Leaving/Requalification

STATEMENT OF THE CASE:

The employer filed an appeal from the June 23, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 15, 2016. Claimant did not participate. Employer participated through John Ulveling, Store Manager. Employer's exhibit one was entered and received into the record.

ISSUES:

Did the claimant voluntarily quit his employment without good cause attributable to the employer and if so, has he requalified for benefits since his separation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a delivery specialist beginning on October 20, 2014, through November 19, 2015 when he voluntarily quit. The claimant had been given a copy of the employer's attendance policy which put him on notice that if he were a three day no-call/no-show for work he would be considered to have voluntarily quit his employment. The claimant was a no-call/no-show for work on November 11, 13, 16, 18 and 19.

Agency records also establish that the claimant has requalified for benefits since the separation from O'Reilly Automotive Inc. account number 280268).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer but has requalified for benefits.

Iowa Code § 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(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 section 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 section 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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer.

However, the administrative law judge further concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer (account number 280268) shall not be charged.

DECISION:

The June 23, 2016, (reference 01) decision is modified in favor of the appellant. The claimant quit without good cause attributable to the employer, but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of this employer shall not be charged.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs