

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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113 – 1<sup>ST</sup> AVE APT #1  
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Appeal Number: 04A-UI-09171-LT  
OC: 07-25-04 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the August 13, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 16, 2004. Claimant did participate with Jessica Dulitz, girlfriend. Employer did participate through Gary McCarthy.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production assembler/fabricator through July 2, 2004 when he quit. Claimant called to report his absence related to illness (diarrhea) on June 29, 2004. This was the last communication between claimant and employer until the appeal hearing. The diarrhea lasted two days but he did not report his absences on June 30, July 1 or July 2, 2004. Claimant has a cell phone but there were no minutes remaining on it. His girlfriend, Jessica Dulitz, read

the handbook that requires employees to maintain contact with employer each day they are absent and that failure to report for three consecutive working days is considered a voluntary leaving of employment. At this point, it was becoming apparent that claimant was becoming mentally confused but Dulitz did not call employer on claimant's behalf.

Two weeks after the June 29 illness was reported, claimant was first prescribed medication for what was later diagnosed as acute psychosis. Claimant had thought he was being "set up for something" but never notified the employer of his medication, medical treatment or hospitalization. Neither claimant, nor anyone on his behalf, spoke to Gary McCarthy about those concerns or asked for a medical leave of absence or FMLA. Dr. Lassise hospitalized claimant in Mason City 5E from August 8 to August 12, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

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 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.

While it is unfortunate that no one communicated with employer on claimant's behalf when his mental illness became apparent, there was no further communication with employer about his status at any time and claimant himself did not call in about the case of diarrhea for July 1 as he had the day prior. The employer is entitled to basic information about why an employee cannot report to work and without it, employer was reasonable in applying its policy. Inasmuch as the claimant, or anyone else on his behalf, 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. Benefits are withheld.

DECISION:

The August 13, 2004, reference 01, decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

dml/pjs