

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN R KOCH
Claimant

APPEAL NO. 11A-UI-04087-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/06/11
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 30, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 9, 2011. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Jim Hook represented the employer.

ISSUE:

Whether Mr. Koch voluntarily quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dustin Koch was employed by Tyson Fresh Meats as a production worker from October 2009 and last performed work for the employer on February 4, 2011. Mr. Koch was next scheduled to work on February 7, 2011, but called in sick. Mr. Koch had been arrested and incarcerated on February 4, 2011. Mr. Koch was absent without notifying the employer for all of his shifts between February 8, 2011 and February 21, 2011. The employer has a written no-call no-show policy that deems three such absences a voluntary quit. The policy was reviewed with Mr. Koch during his orientation. The employer waited until February 21, 2011 to document a voluntary quit. The employer did not hear further from Mr. Koch.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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.

Where a worker is absent three days without notifying the employer in violation of the employer's policy, the worker is deemed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4).

Where a worker separates from the employment due to incarceration, the worker is deemed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(16).

The evidence in the record indicates that Mr. Koch voluntarily quit the employment without good cause attributable to the employer. First, Mr. Koch was absent three days, or more, without notifying the employer in violation of the employer's no-call, no-show policy. Second, Mr. Koch was absent because he had become incarcerated. Each of these reasons, separately, establishes a voluntary quit without good cause attributable to the employer. Accordingly, Mr. Koch is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Koch.

DECISION:

The Agency representative's March 30, 2011, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs