

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUOTH P DENG
Claimant

APPEAL NO. 11A-UI-00053-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS PAYROLL COMPANY
Employer

**OC: 11/14/10
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated December 16, 2010, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on February 9, 2011. Claimant participated personally. The employer participated by Ms. Molly Cook, Human Resource Generalist.

ISSUE:

The issue is whether the claimant filed a timely appeal and whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Duoth Deng was employed by the captioned company from July 27, 2009 until May 11, 2010. Mr. Deng worked as a full-time line worker and was paid by the hour.

After completing his duties on May 11, 2010, Mr. Deng began an approved leave of absence and was expected to return to work on June 2, 2010. The claimant did not return and did not respond to a certified letter sent by the company inquiring as to his status. After the claimant had not reported for a substantial period of time and had not provided any notification to the employer, the employer reasonably concluded that Mr. Deng had voluntarily relinquished his position with the company. Mr. Deng had left the United States to visit his father and had not returned until November 2010.

The claimant's appeal in this matter was filed beyond the ten day statutory limit due to a language barrier.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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 § 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 § 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.

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

In this case the claimant's appeal in this matter was filed late due to a language barrier.

Mr. Deng's employment came to an end after he failed to return to work on the agreed date of June 2, 2010 and provided no notification to the employer of his impending absences for three or more consecutive work days thereafter. The claimant had entered into a leave of absence and did not return at the end of the leave of absence as agreed. Claimant's separation date was thus May 11, 2010. Mr. Deng left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated December 16, 2010, reference 01, is affirmed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs