

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLARENCE R LEE

Claimant

APPEAL NO. 100-UI-08303-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

IWLB LLC

Employer

OC: 08/29/09

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 24, 2010, reference 05, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 29, 2010, in Davenport, Iowa. Employer participated by Dawn Steinhauser, Manager; Tina Neyens, Office Assistant; and Rodney Yetter, Maintenance.. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Dawn Steinhauser; the testimony of Tina Neyes; the testimony of Rodney Yetter; and Employer's Exhibits 1-4.

This case had been previously set for telephone hearing on April 20, 2010, and a decision was issued on April 22, 2010. The claimant had not appeared for that hearing. The claimant appealed to the Employment Appeal Board and the Board remanded the case for a new hearing. The claimant also requested an in-person hearing. The claimant did not appear for the in-person hearing.

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 witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns and operates an apartment complex known as Woodland Apartments in Davenport, Iowa. The claimant worked on and off as a maintenance worker. His last day of work was January 26, 2010.

On January 27, 2010, the claimant called at 7:36 a.m. to say that there had been a water line break in his home but that he would come to work at 10:00 a.m. He did not report to work and he did not call to report that he would be absent. The claimant was a no-call/no-show on January 28, 2010; He was a no-call/no-show on January 29, 2010. Dawn Steinhauser, the manager, was concerned about the situation. The claimant had quit three times in the past. He

had keys to all of the apartments. She spoke with Sgt. Fuller of the Davenport Police Department, who worked with her in trying to improve the conditions at the apartment building. The claimant had been very rude and confrontational in the past and Ms. Steinhauser was concerned about meeting with the claimant at his home. Sgt. Fuller said that he would get the keys from the claimant.

Sgt. Fuller went to the claimant's home and found him sitting in a chair and drinking a beer. The claimant told Sgt. Fuller that he had quit his job. Sgt. Fuller asked the claimant for the keys and the claimant gave him the keys. Thereafter the claimant made harassing phone calls both to Ms. Steinhauser and the owner, who lived in Northern California. It was necessary to have the claimant banned from the property and from calling Ms. Steinhauser and the owner. Sgt. Fuller was involved with this as well.

The employer had a written policy, of which the claimant was aware, that any absences were to be reported to Ms. Steinhauser and that three no-calls/no-shows would be considered a voluntary quit.

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.

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.

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 evidence in this case established that it was the claimant who initiated the separation of employment. The claimant was a no-call/no-show on January 27, 2010; January 28, 2010; and January 29, 2010. The claimant knew that if he failed to come to work on three consecutive workdays and did not report his absence that he would be considered to have quit his job. The

claimant's intention to sever the employment relationship is confirmed by his statement to Sgt Fuller on January 29, 2010, that he had quit. He gave Sgt. Fuller the keys to the apartment complex when requested. The claimant did not appear for the hearing and his version of events is unknown. The claimant voluntarily left without good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated February 24, 2010, reference 05, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css