

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES E SCHOLTUS**  
Claimant

**APPEAL NO. 07A-UI-06019-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MONROE COUNTY**  
Employer

**OC: 05/20/07 R: 03  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Monroe County (employer) appealed a representative's June 6, 2007 decision (reference 01) that concluded Charles E. Scholtus (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 3, 2007. The claimant received the hearing notice and responded by calling the Appeals Section on July 2, 2007. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, claimant was not available; therefore, the claimant did not participate in the hearing. Joni Keith, attorney at law, appeared on the employer's behalf and presented testimony from one witness, John Goode. One other witness, Juanita Murphy, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 27, 1997. He worked full time as a motor grader operator. His last day of physical work was October 14, 2005. On that date he suffered a second episode of diabetic related loss of consciousness while on duty. As a result, his commercial driver's license (CDL), required for his job, was suspended by the DOT. He was placed on a leave of absence, in part covered by FMLA, in part covered by vacation and sick leave, and in part covered by a general unpaid leave of absence. The claimant was advised that the leave would continue until November 28, 2006 unless he could sooner regain his CDL by obtaining the necessary medical verifications. The employer met with him and a union representative on several occasions, most recently October 18, 2006, to discuss the approaching ending of the leave of absence, with the employer offering to assist the claimant in

finding specialist and otherwise seek to facilitate his regaining his medical certification and his CDL. However, the claimant declined the employer's assistance.

November 28, 2006 passed without further action or communication by the claimant. On December 8, 2006, the employer sent the claimant a letter, which he received on December 11, that advised him that if he failed to pursue obtaining the necessary medical clearance so he could return to work, he would lose his position. When the claimant still failed to respond to the employer, the employer sent another letter dated December 27 that advised him that the employer considered the claimant's employment ended.

The claimant established a claim for unemployment insurance benefits effective May 20, 2007. The claimant has received no unemployment insurance benefits since the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for 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 24.22(2)j(1)(2)(3) provides:

Benefit 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.

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out by failing to maintain contact and by failing to take reasonable efforts to regain his medical certification and his CDL. It was the claimant's lack of action that led to the separation, rather than action taken by the employer – the employer only acted to confirm the ending of the employment after the claimant evidenced his intent not to return or to seek to return from the leave of absence. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving employment due to a personal medical condition is not a good cause attributable to the employer. 871 IAC 24.25(35). The claimant has not satisfied his burden. Benefits are denied.

**DECISION:**

The representative's June 6, 2007 decision (reference 01) is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. As of December 27, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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