

**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**

**DOUGLAS K SCHULTZ
812 NE 5TH
EAGLE GROVE IA 50533**

**CENTRAL ELECTRIC COMPANY
15 VERMEER RD
PELLA IA 50219**

**Appeal Number: 05O-UI-06439-RT
OC: 02/13/05 R: 01
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.5-2 – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Douglas K. Schultz, filed a timely appeal from an unemployment insurance decision dated March 31, 2005, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on July 7, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. The notice of appeal was sent to the claimant, but never returned to the Appeals Section marked undelivered. The administrative law judge attempted to call the claimant at a number he found in Iowa Workforce Development records, but no one ever answered. Vince Blom participated in the hearing for the employer, Central

Electric Company. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

The hearing was initially scheduled in this matter for May 3, 2005, but the claimant did not participate by calling in a telephone number before the hearing where he could be reached for the hearing. Therefore, no hearing was held. By a decision dated May 6, 2005, the administrative law judge who was assigned the case at that time, affirmed the unemployment insurance decision denying unemployment insurance benefits to the claimant. The claimant appealed that decision to the employment appeal board. By decision dated June 14, 2005, the employment appeal board remanded this matter for another hearing because the claimant had not participated in the first hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time laborer from October 13, 2003 until he separated from his employment on February 7, 2005. On February 3, 4, 7, 2005, the claimant was absent. He never notified the employer of these absences and the employer did not know why. The employer called the claimant and left messages for the claimant to call the employer, but the claimant never did so. The claimant was then rehired on March 9, 2005, but again separated on April 12, 2005. He was once again rehired on or about April 14, 2005 and again separated on June 23, 2005. The employer allowed the claimant to work off and on after his separation on February 7, 2005 or basically to hire or employ the claimant each time he came back to work. The only separation before the administrative law judge at this time is the separation occurring on February 7, 2005. The claimant did not offer to return to work until on or about March 9, 2005 when he was rehired. The claimant had some personal problems during this period of time.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 24.2(4), (20), (23) provide:

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.

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant voluntarily quit when he failed to show up for work for three days on February 3, 4, and 7, 2005, and did not notify the employer. In fact, the claimant did not show up for work thereafter until on or about March 9, 2005. The claimant did not participate in the hearing to provide evidence on any particular separation. The administrative law judge concludes that there is a preponderance of the evidence that the claimant left his employment voluntarily when he was absent as a no-call/no-show for three consecutive days and continuing thereafter as noted above. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective February 7, 2005. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for his quit. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. Rather, the evidence establishes that the claimant left his employment voluntarily when he was absent for more than three days in a row without notifying the employer and this is not good cause attributable to the employer. There was some evidence that the claimant may have had personal problems, but leaving work for compelling personal reasons when the period of absence exceeds ten working days, as it does here, or for family responsibilities or serious family needs is not good cause attributable to the employer. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision dated March 31, 2005, reference 02, is affirmed. The claimant, Douglas K. Schultz, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

kjf/kjf