

**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**

**JEFF A MASSICK  
1657 – 215<sup>TH</sup> AVE  
HARVEY IA 50119**

**BEN SHINN TRUCKING INC  
PO BOX 286  
KNOXVILLE IA 50138 -286**

**Appeal Number: 05A-UI-07068-DWT  
OC: 05/29/05 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

**Section 96.5-1 – Voluntary Quit**

**STATEMENT OF THE CASE:**

Jeff A. Massick (claimant) appealed a representative's June 29, 2005 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Ben Shinn Trucking, Inc. (employer) would not be charged because he claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 27, 2005. The claimant participated in the hearing. Mike Shinn, the claimant's supervisor, and Roy Swanson, a mechanic, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 15, 2004. The claimant worked as a full-time truck mechanic. The claimant hurt his hand at work in early May 2004. The claimant's injury required him to have surgery on his hand. A few days prior to his separation, the claimant's doctor released the claimant to work without any work restrictions.

After the claimant had been released to work without any restrictions and changed over 15 tires on September 11, 2004, the hand that the claimant had been previously injured hurt. The claimant decided his hand needed more time to heal. The claimant did not go back to the doctor to see if he should continue to work with or without work restrictions. Instead, the claimant did not go back to work. The employer did not know why the claimant did not return to work.

The claimant did not report to work or call the employer the week of September 12, 2004. On September 20, 2004, the claimant received a letter from the employer telling him that his employment had been terminated as of September 15, 2004, because he had not reported to work or contacted the employer for three consecutive days. After the claimant received this letter, he picked up his personal property from the employer's facility.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. A preponderance of the evidence indicates the claimant quit his employment when he left work on September 11, 2004, and did not return. When a claimant quits, he has the burden to establish he quit with good cause attributable the employer. Iowa Code §96.6-2.

The claimant did not satisfy Iowa Code §96.5-1-d or 871 IAC 24.26(6)(b). The claimant did not establish that he quit for reasons that qualify him to receive unemployment insurance benefits.

If the claimant's separation is considered a discharge because the employer sent him a September 20 letter indicating he no longer worked for the employer, the employer discharged him for work-connected misconduct. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). The claimant's failure to report to work and notify the employer for three consecutive days that he was unable to work amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee.

Even if the claimant told a co-worker he was leaving because his hand hurt, the claimant did not talk to Shinn or anyone in management. The claimant's testimony that he told Shinn he was going to take a couple of days off from work is not credible. The claimant's testimony as to what and when he told Shinn anything changes during the claimant's testimony. The claimant's hand may have hurt after he was released to work without any restrictions and worked a full day. Instead of going back to the doctor because his hand hurt, the claimant decided he would not go to work for a while. In addition to not reporting to work, the claimant failed to notify the employer he planned to take some time off so his hand would feel better. In essence the claimant took a leave of absence without the employer's knowledge or permission. The employer discharged the claimant for reasons constituting work-connected misconduct.

Regardless of whether the claimant quit or was discharged, he is not qualified to receive benefits as of May 29, 2005.

**DECISION:**

The representative's June 29, 2005 decision (reference 02) is affirmed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 29, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf