

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VAN G EVANS
Claimant

APPEAL NO. 09A-UI-01290-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AADG INC
CURRIES-GRAHAM
Employer

OC: 11/09/08 R: 02
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Van Evans filed a timely appeal from the January 21, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 12, 2009. Mr. Evans participated. The employer did not participate. The employer provided a telephone number for the hearing, but was not available at that number at the scheduled time of the hearing. Exhibit A was received into evidence.

ISSUE:

Whether Mr. Evans voluntarily quit or was discharged from the employment. The administrative law judge concludes that Mr. Evans voluntarily quit.

Whether Mr. Evans' voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Van Evans was employed by Curries-Graham as a full-time production worker from January 13, 2008 and last performed work for the employer on September 24, 2008. After the first 90 days in the employment, Mr. Evans was assigned to the third shift. The hours of the third shift were 11:00 p.m. to 7:00 a.m., Sunday through Thursday. At the end of the employment, Mr. Evans traveled out of town to help a friend move. Prior to his scheduled shift, Mr. Evans took a nap. When Mr. Evans awoke he tried to start his car, but found that his battery was dead. Mr. Evans did not get his car restarted until the following morning. By that time, Mr. Evans had missed a shift of work. Mr. Evans had left his phone at home and did not notify the employer he would be absent from work. Mr. Evans returned home. Mr. Evans telephoned the workplace and left a message. In the message, Mr. Evans apologized for the lateness of his call to alert the employer of the absence. Mr. Evans said he did not know if he had a job or not. It is unclear whether the employer was aware of Mr. Evans' message. Mr. Evans did not receive a call from the employer. Mr. Evans did not report for his next scheduled shift or any subsequent shift. Mr. Evans did not make any further attempt to contact the employer. Mr. Evans was dissatisfied with the employment and was not certain whether he wished to continue in the employment.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence indicates that the employment ended with Mr. Evans being absent from a scheduled Sunday night-Monday morning shift without notifying the employment until Monday morning. The weight of the evidence indicates that Mr. Evans left a message on the employer's phone on the Monday morning and questioned whether he still had a job. The evidence indicates that the employer had never communicated to Mr. Evans that he no longer had a job. A reasonable person who wished to continue with the employment would have reported for the next shift schedule to start at 11:00 p.m. on that Monday night. Mr. Evans did not do that. Instead, Mr. Evans ceased appearing for work and made no further attempt to contact the employer. Mr. Evans was unhappy with the employment and was at best ambivalent about returning to the employment. The weight of the evidence indicates a voluntary quit, not a discharge.

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.

Where a person voluntarily quits employment due to dissatisfaction with the work environment, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

The weight of the evidence indicates that Mr. Evans voluntarily quit the employment for personal reasons that included general dissatisfaction with the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Evans voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Evans is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Evans.

DECISION:

The Agency representative's January 21, 2009, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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