

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONNIE R ADKISON
Claimant

APPEAL NO. 07A-UI-07536-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAGEN INC
FAGEN CONSTRUCTION OF MINNESOTA
Employer

OC: 06/24/07 R: 12
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Lonnie Adkison filed a timely appeal from the July 23, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 21, 2007. Mr. Adkison did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Ashley Hoffman, Human Resources Assistant, represented the employer.

ISSUE:

Whether the claimant voluntarily quit the employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lonnie Adkison was employed by Fagen Construction as a full-time tool room attendant from May 1, 2006 until April 9, 2007, when he voluntarily quit. Mr. Adkison notified the employer that he was quitting the employment because he was planning to have knee surgery. Up to the quit, Mr. Adkison had demonstrated the ability to perform his assigned duties. Mr. Adkison's knee condition was not work-related. Mr. Adkison did not provide the employer with medical documentation, or otherwise report to the employer, that he was quitting upon the advice of a licensed and practicing physician. The employer continued to have work available for Mr. Adkison. Since Mr. Adkison left the employment, he has not made further contact with the employer to indicate that he has been released to return to work and/or to offer his services to the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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 the record indicates that Mr. Adkison voluntarily quit because he was planning to undergo knee surgery for a non-work-related condition. Mr. Adkison did not notify the employer that his quit was based on the advice of a licensed and practicing physician. In addition, Mr. Adkison had not demonstrated recovery and has not returned to the employer upon full recovery to offer his services.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Adkison voluntarily quit without good cause attributable to the employer. Accordingly, Mr. Adkison 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. Adkison.

DECISION:

The Agency representative's July 23, 2007, 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 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs