

**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**

**JAY E WICKEY
3017 VIKING DR APT 2
SIOUX CITY IA 51104**

**WELLS DAIRY INC
PO BOX 1310
LE MARS IA 51031-1310**

**Appeal Number: 06A-UI-03434-S2T
OC: 02/12/06 R: 01
Claimant: Appellant (5)**

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 Quit

STATEMENT OF THE CASE:

Jay Wickey (claimant) appealed a representative's March 14, 2006 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Wells Dairy (employer) for failure to follow instructions in the performance of his job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2006. The claimant participated personally. The employer participated by Wedy Lee, Human Resources Generalist; Julie Foley, Workers' Compensation; and Meredith McKenzie, Workers' Compensation Assistant.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 2, 2005, as a full-time production worker. He was injured on the job on September 1, 2005. He was released to return to work with restriction on September 8, 2005. The employer found light-duty work that met the claimant's medical restrictions. The employer notified the claimant that he was to begin his light-duty work on October 7, 2005.

On October 7, 2005, the claimant notified the employer that he would not be at work due to car problems. On October 10, 2005, the claimant left a message for the employer that he could not attend work due to car problems. The employer never received this message. After October 10, 2005, the claimant did not appear for work and did not call to inform the employer of the reason for the failure to appear for work.

The employer has a policy that an employee will be considered to have quit if the employee is absent for three days without giving notice to the employer. The claimant signed for receipt of the company handbook containing the policy on May 2, 2005. The employer tried repeatedly to reach the claimant. The employer even gave messages to the claimant's physician indicating the claimant should contact the employer immediately. The claimant was considered to have quit on October 17, 2005, for failing to appear for work without notice for more than three days.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

871 IAC 24.25(4) provides:

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.

The claimant was absent from work for many days without giving notice to the employer. The employer has a rule that if the employee is absent without notice to the employer for three days the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on his absence from work for more than three days without giving notice to the employer. There is no evidence of good cause attributable to the employer.

DECISION:

The representative's March 14, 2006 decision (reference 03) is modified with no effect. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/tjc