

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICK A LEE**  
Claimant

**APPEAL NO. 10A-UI-16789-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RON'S LP GAS SERVICE**  
Employer

**OC: 11/14/10**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Rick A. Lee filed a timely appeal from an unemployment insurance decision dated December 7, 2010, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held January 27, 2011 with Mr. Lee participating. Manager Kevin Sprecher participated for the employer, Ron's LP Gas Service. Exhibit A was admitted into evidence.

**ISSUES:**

Did the claimant quit or was he discharged?

Was the separation a disqualifying event?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Rick A. Lee was employed by Ron's LP Gas Service from May of 2007 until approximately November 8, 2010. Mr. Lee worked as a driver and deliveryman for the company. Early November is the employer's busiest time of the year, delivering LP gas to farm customers due to the harvest.

Mr. Lee had requested vacation for the week of November 7, 2010. An avid deer hunter, Mr. Lee had spent approximately \$3,000.00 in 2010 for a new deer stand. On or about November 5, 2010 Manager Kevin Sprecher told Mr. Lee that his request for vacation was denied because of the employer's business needs.

Mr. Lee did not report for work on Monday, November 8, 2010 or for that week. When he returned on Monday, November 15, 2010, Mr. Sprecher told Mr. Lee that he considered that Mr. Lee had resigned when he did not report for work.

## REASONING AND CONCLUSIONS OF LAW:

This decision can be viewed as either a quit or as a discharge. It is clear from the evidence in the record that the employer views the separation as a voluntary quit while the claimant believes that it was 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.

In cases of a voluntary quit, the claimant has the burden of proof. See Iowa Code section 96.6-2. The evidence shows that the separation occurred because Mr. Lee chose to go hunting rather than to go to work. An individual who resigns in order to take a vacation leaves work without good cause attributable to the employer. See 871 IAC 24.25(25). Viewed as a quit, the claimant would be disqualified for benefits.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

In cases involving discharges, the employer has the burden of proof. An individual is disqualified if the individual is discharged because of excessive unexcused absenteeism. See

Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence establishes that the claimant was deliberately absent for personal reasons although told that his request for vacation was denied. Viewed as a discharge, the claimant would be disqualified for benefits.

While the question is a close one, the administrative law judge concludes that the greater weight of evidence is that Mr. Lee initiated the separation from employment by choosing hunting over working. The administrative law judge concludes that the separation was a voluntary quit and that benefits must be denied.

**DECISION:**

The unemployment insurance decision dated December 7, 2010, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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