

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD E BURNS
Claimant

APPEAL NO. 13A-UI-12704-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXIDE TECHNOLOGIES
Employer

OC: 10/20/13
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Chad Burns filed a timely appeal from the November 7, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 5, 2013. Mr. Burns participated. Tim Guyer represented the employer. Exhibits Two, Three and Four were received into evidence.

ISSUE:

Whether Mr. Burns separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Chad Burns was employed by Exide Technologies as a full-time wet form operator from October 2, 2013, and last performed work for the employer on October 9, 2013. Mr. Burns' work hours were 2:00 p.m. to 10:00 p.m., Monday through Friday.

Mr. Burns participated in orientation on October 2, 2013. During orientation, Tim Guyer, Human Resources Manager, discussed the employer's no-fault attendance policy. Mr. Guyer discussed the employer's attendance point system and that a single point would be assessed for an absence when proper notice had been given. Proper notice consisted of calling the designated absence reporting number at least 30 minutes prior to the scheduled shift. Mr. Guyer discussed that there were ways to reduce the point assigned to an absence and a way to increase the number of points assigned to an absence. Mr. Guyer discussed that a no-call/no-show absence would be awarded three attendance points. Mr. Guyer discussed that an employee who accrued ten attendance points would be discharged from the employment and emphasized the firmness of that policy. Mr. Guyer discussed that employees on probation should provide him with a reason for absences despite the no-fault attendance policy, since Mr. Guyer would have to make a decision about whether an employee would continue in the employment beyond the probationary period. Mr. Burns was present for the discussion of the attendance policy and absence reporting procedure.

Mr. Burns worked a total of six shifts for the employer. The first three shifts were on Wednesday-Friday, October 2-4, 2013. The last three shifts were on Monday-Wednesday, October 7-9.

After Mr. Burns worked his shift on October 9, 2013, Mr. Burns was next scheduled to work on Thursday, October 10, 2013. Mr. Burns properly notified the employer that day that he needed to be absent from work. The employer assigned one attendance point to the absence. On Friday, October 11, 2013, Mr. Burns was absent from work, but did not contact the employer. The employer assessed three attendance points to the no-call/no-show absence. The four attendance points did not subject Mr. Burns to discharge from the employment. On October 11, 2013, Mr. Burns was sick in bed with a headache he believed was a migraine headache. Mr. Burns was next scheduled to work on Monday, October 14, 2013. By that time, Mr. Burns was feeling well again.

On the morning of October 14, Mr. Guyer left a voicemail message for Mr. Burns at Mr. Burns' telephone number. In the message, Mr. Guyer said that because Mr. Burns had been absent without notifying the employer, he hoped that Mr. Burns was okay and that there had not been any sort of accident. Mr. Guyer further stated in the message that he assumed Mr. Burns had quit, but for Mr. Burns to call him if he had any questions. Mr. Guyer left a phone number for the workplace where he could be reached to discuss the employment. Mr. Guyer did not say in the message that Mr. Burns was discharged from the employment. Mr. Burns listened to the message within a couple hours of receiving it. Mr. Burns did not make any further contact with Mr. Guyer to discuss his absence, his employment status, or his return to 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 in the record establishes that Mr. Burns voluntarily quit the employment and was not discharged by the employer. The weight of the evidence indicates that the employer reviewed the attendance policy with Mr. Burns at the start of the employment and advised that an employee would need ten attendance points before the employee would be subject to discharge for attendance. Mr. Burns did not have ten attendance points. The evidence indicates that Mr. Burns was absent due to illness properly reported to the employer on October 10, 2013 and then was a no-call/no-show on October 11, 2013. Even after Mr. Burns was feeling better, he made no attempt to contact the employer to discuss his absence or why he had not contacted the employer in connection with the October 11 absence. Even after the employer left a message saying that the employer assumed he had quit, and after the employer invited Mr. Burns to call to discuss his employment status, Mr. Burns made

no effort to contact the employer. The weight of the evidence indicates that if Mr. Burns concluded from the orientation or the employer's phone message that he had been discharged from the employment, such a conclusion was erroneous and unreasonable.

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.

The weight of the evidence indicates that Mr. Burns voluntarily quit the employment without good cause attributable to the employer by failing to report for work or make contact with the employer after he reported an absence on October 10, 2013. Mr. Burns 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.

DECISION:

The Agency representatives November 7, 2013, 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

jet/css