

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN D KENDALL**  
Claimant

**APPEAL NO. 09A-EUCU-00519-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**B R STORES INC**  
Employer

**OC: 10/05/08**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 2, 2009, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 19, 2010. Claimant participated. Employer participated by Donna Bristol, Director of Human Resources. The record consists of the testimony of Donna Bristol and the testimony of John Kendall.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns and operates a Super Saver grocery store in Council Bluffs, Iowa. The claimant was hired on August 20, 2009, as a full time produce clerk. His last day of work was September 16, 2009. His official date of separation from the employer was November 10, 2009.

The claimant was involved in an automobile accident on September 18, 2009, which was not work related. He was taken to the emergency room following the accident with multiple injuries, including a cervical sprain/strain and a broken nose. He later followed up with his personal physician. He was taken off work. On October 22, 2009, the claimant's physician indicated that medically there was no further treatment that could be offered and that the claimant could return to work when he was physically able.

The employer had a written policy, of which the claimant was aware, that if an employee was not eligible for Family Medical Leave (FMLA), an employee could miss no more than two consecutive pay periods. If an employee missed more than two consecutive pay periods, he or she was separated for inactivity. The claimant would not be able to return to work until he provided a full-duty release. The employer would, however, honor a restriction for a shorter workday if the claimant could otherwise perform all job duties. The claimant was not qualified under FMLA since he worked for the employer for less than one month. He missed consecutive

pay periods on September 26, 2009; October 10, 2009; and October 24, 2009. He did not present a full-duty release to the employer prior to his separation.

**REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

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.

The evidence in this case established that the claimant was injured in an automobile accident on September 18, 2009, which was not work related. His injuries prevented him from returning to work. The employer's policy stated that if an employee missed work for two consecutive pay periods, that there was a separation of employment for inactivity. Iowa law states that if an employee is unable to provide a full-duty release to his or her employer that the claimant will be considered to be a voluntary quit without good cause attributable to the employer. Accordingly, benefits are denied.

**DECISION:**

The decision of the representative dated December 2, 2009, reference 03, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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