

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

EVERETT D EWING
1501 IMPERIAL AVE
SAN DIEGO CA 92101

KEYSTONE ELECTRICAL MFG CO
2511 BELL AVE
DES MOINES IA 50321-1118

Appeal Number: 05A-UI-12223-HT
OC: 11/06/06 R: 12
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) – Quit
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Everett Ewing, filed an appeal from a decision dated December 1, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 20, 2005. The claimant participated on his own behalf. The employer, Keystone Electrical, participated by Vice President Valeska Buie.

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: Everett Ewing was employed by Keystone Electrical

from March 24 until July 15, 2005. He was a full-time assembler working 6:30 a.m. until 2:30 p.m. At the time of hire the claimant received a copy of the employee handbook, which sets out the attendance policies. The employer considers any employee who is no-call/no-show to work for three consecutive days to be a voluntary quit.

Mr. Ewing's last day of work was Thursday, June 30, 2005. After that he was absent from work due to personal problems. He called in at first and talked to supervisor or to Vice President Valeska Buie. On July 11, 2005, she told him he would need medical documentation to support his assertion he was so emotionally overwrought that he could not work. He did not provide any such documentation and was absent from work on July 12, 13, 14 and 15, 2005. When he talked with Ms. Buie on July 15, 2005, she told him he had "pointed out," meaning he had accumulated too many attendance points.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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(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 asserts he did call in most days he was absent to report he would not be in. The employer has not firmly established he was no-call/no-show to work the last four days and so it cannot be absolutely determined he was a voluntary quit by operation of law under the provisions of the above Administrative Code section.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

- (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was apparently discharged for excessive absenteeism. He had been absent for more than two weeks due to personal problems. Although he asserted he was too emotionally stressed to come to work because of his personal problems, he did not provide any medical statements supporting that contention, even when asked to do so by the employer. Absences due to personal problems are not excused, even if they are reported. See Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The record establishes the claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of December 1, 2005, reference 01, is modified without effect. Everett Ewing was discharged for misconduct and he is disqualified. Benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw