

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L MESNER
Claimant

APPEAL NO. 10A-UI-09047-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEST INTERNATIONAL INC
Employer

**OC: 12/20/10
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 18, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 11, 2010. Claimant participated. Employer participated through Sue Richardson and Ron Martin.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a welder from April 12, 2010 and was separated from employment on May 26, 2010. On May 21 he worked a partial day and left early with notice to and permission from employer. He was a no call-no show on May 24, 25, and 26, 2010. On May 26 Martin called claimant on his cell phone and left a message but heard nothing back. Employer's policy calls for termination if the employee is a no call-no show for three days. Claimant told foreman Juan on May 19 that he was quitting because he could not wear steel-toed boots any longer. He did not see a doctor about the boots or his feet and did not tell Richardson or Martin about his concerns.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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 § 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 § 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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant was not required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment if employer had or should have had reasonable knowledge of the condition. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

The employer had no way of knowing that claimant's boots were hurting his feet since claimant did not tell them. Since claimant failed to report to work or communicate with employer he is considered to have abandoned his job. Benefits are denied.

DECISION:

The June 18, 2010 (reference 01) decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs