

**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**

**GEORGE C MCNEAL
1737 LOGAN AVE
WATERLOO IA 50703**

**BERTCH CABINET MANUFACTURING INC
PO BOX 2280
WATERLOO IA 50704-2280**

**Appeal Number: 05A-UI-11391-RT
OC: 10-09-05 R: 03
Claimant: Appellant (1)**

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 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, George C. McNeal, filed a timely appeal from an unemployment insurance decision dated October 28, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on November 22, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the Notice of Appeal. Mitzi Tann, Human Resources Director, and Maxine Matlock, Supervisor, participated in the hearing for the employer, Bertch Cabinet Manufacturing, Inc. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department of unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full time custom marble top apprentice from February 1, 2005 until he voluntarily quit effective September 21, 2005. The claimant was absent for three days in a row without notifying the employer on September 19, 20, and 21, 2005. The employer has a specific policy at Employer's Exhibit One providing that remaining away from work three consecutive days without employer approval would be considered a quit. The claimant did not contact the employer on any of those three days nor specifically did he contact his supervisor, Maxine Matlock, one of the employer's witnesses. The claimant had called Ms. Matlock a couple of days earlier and indicated that he was stuck in Milwaukee and that he would be gone that day. Ms. Matlock told the claimant to get back as soon as possible. Thereafter she did not hear from the claimant and he was gone in addition to those days the three days noted above. The employer's policy is in its handbook, a copy of which the claimant received and for which the claimant signed an acknowledgement. The claimant has never returned to the employer and offered to go back to work. No one has ever told the claimant that he was fired or discharged. The claimant never expressed any concern either to Ms. Matlock or to the employer's other witness, Mitzi Tann, Human Resources Director, about his working conditions nor did he ever indicate to them an intention to quit over any problems related to his employment. Ms. Matlock did hear that the claimant had told co-workers that he was looking for another job in Milwaukee and would not be at the employer's long. If the claimant had shown up for work as scheduled work would have been available for him.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 employer's witnesses credibly testified, and the administrative law judge concludes, that the claimant left his employment voluntarily effective September 21, 2005, when he was absent for three days in a row without notifying the employer. The employer's witnesses credibly testified that the claimant was absent on September 19, 20, and 21, 2005 without notifying the employer. The employer's witnesses also credibly testified that the employer has a policy at Employer's Exhibit One stating that remaining away from work three consecutive days without the employer's approval would be considered a quit. This is in the employee's handbook, a copy of which the claimant received and for which he signed an acknowledgment. The claimant has never returned to the employer and offered to go back to work or otherwise contacted the employer. No one told the claimant that he was fired or discharged. The claimant did speak to Ms. Matlock earlier prior to September 19 about being stuck in Milwaukee and she told him to get to work as soon as possible. However, thereafter, the claimant never talked to Ms. Matlock. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective September 21, 2005 when he was absent for three days in a row without notifying the employer and in fact never offered to return to work thereafter. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for his quit. Being absent for three days in a row without giving notice to the employer in violation of the employer's rule is not good cause attributable to the employer. There is no evidence that the claimant ever expressed any concerns to the employer or indicated or announced an intention to quit if any problems he was having at work were not addressed. There is some evidence that the claimant was looking for a job in Milwaukee and did not plan to be at the employer's long. Leaving work voluntarily to move to a different locality or to seek other employment but not secure employment is not good cause attributable to the employer. See 871 IAC 24.25 (2) and (3). Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on September 21, 2005, without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

DECISION:

The representative's decision of October 28, 2005, reference 01, is affirmed. The claimant, George C. McNeal, is not entitled to receive unemployment insurance benefits until, or unless, he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

kkf/kjw