

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

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Appeal Number: 05A-UI-02583-SW
OC: 02/13/05 R: 01
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 Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 8, 2005, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A hearing was held on April 26, 2005, in Sioux City, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Richard Sturgeon. Maria Harder participated in the hearing on behalf of the employer. Exhibits One through Six and A were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a maintenance person from March 15, 2004 to February 4, 2005. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have voluntarily quit employment after three days of absence without

notice to the employer. His work schedule was from 6:30 a.m. to 5:00 p.m., Monday through Friday, with some required Saturday work.

The claimant received warnings on June 24, August 30, and October 4, 2004, for repeated tardiness and absences. On January 21, 2005, he was informed that employees were scheduled to work on Saturday, January 22. He failed to report to work or notify the employer about his absence. On January 25, the claimant received a three-day suspension as a result of missing work on January 22. He was warned that any scheduled work time, including Saturdays, that was missed without notice to the employer would be considered a no-call/no-show and would lead to termination.

The claimant volunteered to work on Saturday, February 5. When an employee volunteers to work, it is considered a scheduled workday and employees are required to call in if they are going to be absent. The claimant was absent from work without notice to the employer on February 5. He was having problems with a swollen knee and called in sick on February 7 and 8, 2005. The claimant was absent from work on February 9, 10, and 11 without notice to the employer. He did go to the doctor's office on February 11. After the claimant failed to report to work or call in on February 11, the employer considered him to have quit his employment due to three days of absence without notice to the employer. The human resource generalist for the employer mailed a registered letter to the claimant confirming that he voluntarily terminated his employment effective February 11, 2005.

The claimant received a notice of a registered letter on February 12 but did not pick it up until February 14. He assumed he was being fired because he heard from an employee that his time card was not in its slot. As a result, even though he had not picked up the letter yet and did not know what it said, he did not report to work as scheduled on Monday, February 14 or contact the employer ever again. The claimant picked up the letter later that day, but he did not contact the employer to inform them that he had not voluntarily quit his employment.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. The unemployment insurance rules provide that a claimant is considered to have voluntarily left employment without good cause attributable to the employer if the claimant was absent for three days without giving notice to the employer and violation of a company rule. 871 IAC 24.25(4).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. As an initial matter, the claimant's testimony that he volunteered to work on February 5 and was not required to call in if he decided not to work is contradicted by the written warning and suspension the claimant received just a week earlier. The claimant's testimony that he talked to a supervisor on February 9 and told him that he was going to see the doctor is contradicted by his supervisor's e-mail to the human resources department. In an earlier e-mail, the supervisor notified the human resources department that the claimant had missed work on Saturday, February 5, but he had called in on February 7. If the supervisor was intent on setting the claimant up to be discharged, he would not have reported to human resources that the claimant had called in during the week. The claimant's conduct in making an assumption that he had been fired for missing is most consistent with

someone who has been absent without properly notifying his employer, not someone who has been given approval to be off work by his supervisor, which is what the claimant asserted. Finally, the claimant was evasive when he was questioned about why he did not come in to work on February 14. His testimony, therefore, is not credible and the claimant must be considered to have voluntarily quit employment without good cause attributable to the employer through his absence without notice of the employer on three consecutive workdays in violation of the employer's rules.

Even if the claimant's separation were treated as a discharge, the claimant would be disqualified because his termination was the result of his being absent without notice for several days, after he had been recently warned about such conduct.

DECISION:

The unemployment insurance decision dated March 8, 2005, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/sc