IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SCOTT A KENDALL
Claimant

SANITARY SERVICES INC
Employer

APPEAL NO. 07A-UI-11148-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/04/07 R: 01
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Scott Kendall filed an appeal from a representative's decision dated November 26, 2007, reference 01, which denied benefits based on his separation from Sanitary Services, Inc. After due notice was issued, a hearing was held by telephone on December 18, 2007. The employer participated by Eric Lundell, General Manager. Mr. Kendall did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Kendall was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kendall was employed by Sanitary Services, Inc. from September 24 until November 2, 2007 as a full-time driver and laborer. On October 31, he was assigned to perform garbage pickup in two small towns. The employer learned later that day that he had returned to the shop, parked his truck, and left the premises. He had not notified anyone of his intentions. The employer did not know he had left without completing his work until customers called to complain about the lack of garbage pick-up. Mr. Kendall had a two-way radio in his vehicle and he could have contacted Mr. Lundell or one of his coworkers to explain why he was leaving. He also could have contacted Mr. Lundell on his cell phone if necessary.

The employer assumed that Mr. Kendall quit when he left the job on October 31 with 80 percent of his garbage pickups undone. Therefore, no one went to his home to pick him up for work on November 1. Mr. Kendall did not report for work or contact the employer on November 1. He was scheduled to be at work at 7:00 a.m. on November 2 but did not contact the employer until approximately 9:30 a.m. He asked why no one had picked him up that morning and was told he was presumed to have quit on October 31. Mr. Kendall's job was no longer available to him on November 2.

The employer knew at the time of hire that Mr. Kendall would need to be transported to and from work and agreed to have someone pick him up. The employer intended to continue providing him a ride to and from work had there not been a basis on which to assume he quit. Work would have still been available to Mr. Kendall had he notified the employer of his intentions on October 31 or November 1.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge cannot conclude that Mr. Kendall quit his employment. To find a voluntary quit, there must be evidence of an intention to sever the employment relationship accompanied by some overt act of carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Mr. Kendall was gone for part of the day on October 31 and the full day on November 1 without notice to the employer. These factors are not sufficient to establish an intention to quit. The fact that Mr. Kendall contacted the employer on November 2 is indicative of an intention to remain in the employment. Since it was the employer's decision that he would not be allowed to return to work, the separation is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Kendall was discharged after he walked off the job on October 31 and missed November 1 without calling in. He had the means to contact the employer about his decision to leave early on October 31. He could have contacted his manager by two-way radio or by cell phone but chose to do neither. The employer had no reason to believe he had not completed his route until customers started to call to complain.

Mr. Kendall's conduct in walking off the job without notice caused the employer to have customers who were not pleased. Had the employer received notice from Mr. Kendall that there was a problem, steps could have been taken to have someone else complete his route so that garbage collection could proceed as scheduled. His actions in walking off the job with 80 percent of his work left to be completed constituted a substantial disregard of the employer's interests and standards.

Mr. Kendall then failed to report for work or contact the employer on November 1. If he was expecting to be picked up for work as usual but was not, he should have notified the employer. He did not do so. The same is true of November 2. If he was expecting to be picked up in time to be at work at 7:00 a.m. as scheduled, one would have to wonder why he waited until approximately 9:30 a.m. before contacting the employer. The evidence failed to establish that Mr. Kendall had good cause for being absent on November 1 and November 2 or for not giving the employer timely notice that he had not been picked up for work.

After considering all of the evidence, the administrative law judge concludes that Mr. Kendall's conduct of October 31 and November 1 is sufficient to establish disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated November 26, 2007, reference 01, is hereby affirmed as to the disqualification. Mr. Kendall was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw