

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY A LORD

Claimant

BRICKINRIDGE PARTNERS

Employer

APPEAL NO. 09A-UI-06156-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/09

Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 9, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 18, 2009. Claimant participated and witness Rhonda Hayes. Employer did not participate. Mark Van Zuiden called after the hearing was closed. He did not call within 5 – 10 minutes at the start of the hearing. A message was left on the number he provided to the Appeals Section at 8:00 a.m. informing him the hearing was proceeding and for him to call in to the Appeals Section if he wanted to participate. He did not contact the Appeals Section until 9:14 a.m. He did not present legal good cause for reopening the hearing.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 13, 2009. Mr. Lord was a maintenance man at an apartment complex.

The employer, Brickinridge Partners, hired a new management company to run the complex, PMI Management. On March 13, 2009 the employees were notified about the change in management. Rhonda Hayes was Mr. Lord's supervisor and was notified that same day. PMI Management came to the apartment complex and announced to staff that they were taking over; that there would be payroll cuts and that everyone's job would be changed. The current staff decided to have a meeting to discuss their circumstances and went to lunch. The staff, including Mr. Lord, decided they needed more time to think about their options and wanted to let PMI know on Monday. Ms Hayes called PMI and told them that fact and PMI told her that if the employees did not come back immediately she was to let them know they were discharged and

she was to collect the keys. Ms Hayes did this and was then told she was no longer the manager.

REASONING AND CONCLUSIONS OF LAW:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence does not establish Mr. Lord quit, he was terminated when he did not return to work and wanted some more time to think over his options.

The next issue is whether Mr. Lord committed misconduct.

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.

The employer did not provide advance notice to employees about the change in management company and that the employee's jobs were going to be restructured. The employer did not provide specifics on how much Mr. Lord was going to receive in pay. Mr. Lord was not acting in a manner that was in substantial disregard of the employer's interest when he told Ms. Hayes he needed more time to consider his options. The suddenness of the changes and potential reduction of pay were matters that deserved serious consideration by Mr. Lord. He did not commit misconduct by telling his employer he needed more time.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer or committed misconduct when he was discharged because he needed to take the afternoon off to consider his options and whether he wanted to continue his employment with Brickinridge Partners.

DECISION:

The decision of the representative dated April 9, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs