

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT SHELTON**  
Claimant

**APPEAL NO: 11A-UI-05745-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TITAN TIRE CORPORATION**  
Employer

**OC: 12/19/10**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Robert Shelton (claimant) appealed an unemployment insurance decision dated April 28, 2011, reference 02, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Titan Tire Corporation (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2011. The claimant participated in the hearing. The employer participated through Deborah Sgambagi, Human Resources Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time general laborer from February 19, 1996 through December 29, 2010. He was taken off work on November 11, 2010 due to a non-work-related medical condition but was released to return to work without restrictions on December 20, 2010. The employer had a labor lock out due to economic reasons and it began on December 17, 2010. Consequently, the claimant could not return to work on that date.

The union ratified the agreement on December 23, 2010 and the claimant was present for that meeting. Many union members were aware that all employees would return to work on December 27, 2010 and if any questioned it, they were to contact their union office. The employees returned to work on December 27, 2010 but the claimant failed to call or report to work for three days ending December 29, 2010. The employer's attendance policy provides that employees are considered to have voluntarily quit if they are a no-call/no-show for three consecutive work days. The employer sent the claimant a certified letter on January 5, 2011 advising him he was considered to have voluntarily quit his employment. The employer

received a letter from the claimant on January 10, 2011 which had been dated on December 30, 2010 and it advised the employer he was quitting his employment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without giving notice and in violation of company policy. 871 IAC 24.25(4). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when he was a no-call/no-show for three consecutive days as of December 29, 2010 in violation of company policy.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

**DECISION:**

The unemployment insurance decision dated April 28, 2011, reference 02, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs