

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARVIN RUPERT
Claimant

APPEAL NO. 09A-UI-06875-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION
Employer

OC: 04/05/09
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 27, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 1, 2009. Claimant participated. The administrative law judge telephoned the representative of the employer, Josh Burrows and then the employer's listed witness, Nora Windchester. Ms. Windchester was not available. Mr. Burrows then indicated that he could not participate in the hearing without any employer's representative. The record consists of the testimony of Marvin Rupert; the testimony of Sarah Williams; and Claimant's Exhibits A, B, and C.

ISSUE:

Whether the claimant voluntarily quit his employment for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant had been employed for two years as a maintenance worker at a plant in Cedar Rapids. This job was a full-time position and the claimant worked from 1:00 p.m. through 9:00 p.m. on Mondays through Fridays. He was not scheduled to work on either Saturday or Sunday. The claimant worked his shift on March 27, 2009. He then had off days on Saturday and Sunday. On Monday, March 30, 2009, he did not go to work as he was attending a funeral in Chicago. He was unable to call his employer but he did arrange for another employee to fill in for him on Monday.

On Tuesday, March 31, 2009, the claimant reported to work and was then told he was terminated. The fact finding by the representative stated that the claimant voluntarily quit his employment by failing to report to work for three days in a row and not notifying the employer of the reason.

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 in this case shows without question that the claimant did not intend to voluntarily terminate his employment. The claimant did miss a single day of work to attend a funeral but he reported to work the next day. The claimant even arranged for someone to cover his shift on Monday. Although the claimant should have made an effort to get in touch with the employer to explain the circumstances on Monday, this failure does not constitute either an intention to sever the employment relationship or an overt act to carry out that intention. Benefits will be awarded if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 27, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css