

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAMIAN L BLAISE
Claimant

APPEAL NO. 10A-UI-17169-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEAVENLY PET SANCTUARY
Employer

OC: 11/14/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated December 9, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 27, 2011. The employer participated by Laura Conti, director. Although the claimant responded to the hearing notice and provided a telephone number at which he could be reached, voice mail picked up when that number was dialed by the administrative law judge. The claimant was told to call by 8:35 a.m. The administrative law then called the employer and asked the employer to wait to see if the claimant would call. At approximately 8:43 a.m., the administrative law judge called the employer and held the hearing. The employer had submitted affidavits from Laura Conti and Josh Edginton, as well as two other exhibits. These were marked and received into evidence as Employer's Exhibits A through D. The record consists of these four exhibits. No additional testimony was received, since the employer had submitted sworn affidavits. Ms. Conti was asked if she wished to provide any additional information under oath and she said that she did not.

ISSUE:

Whether the claimant voluntarily left 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 employer is an animal shelter. The claimant was a shelter cleaning and animal caretaker. He started working on April 29, 2009. The claimant's last day of work was October 23, 2010. He was scheduled to work on October 24, 2010. At that time, he walked off the job. He was angry that he had received a letter from the employer concerning the conditions of the shelter, notably the cat boxes. He went to Ms. Conti's home and proceeded to yell at her about the note. He then left and never returned to work. Work was available for him at the time he stopped coming to work.

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.

871 IAC 24.25(27) and (28) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

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 is uncontroverted that it was the claimant who initiated the separation of employment. He apparently became angry because of a letter the shelter director left for him, which listed a number of things that had been left undone by him and another employee. He refused to return to work and later told the employer that he had another job. The claimant indicated in his appeal that he quit because of the way he was treated. The written testimony of Josh Edginton, another employee, directly contradicts that allegation. The claimant did not testify at the hearing and the administrative law judge had no way to find out why he quit.

The claimant had the burden of proof to show that he quit for good cause attributable to the employer. He did not sustain this burden of proof. Accordingly, benefits are denied.

DECISION:

The representative's decision dated December 9, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw