

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE R ROUSH
Claimant

APPEAL NO. 07A-UI-03550-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PMP INC
Employer

**OC: 03/11/07 R: 02
Claimant: Appellant (1)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Kyle Roush, filed an appeal from a decision dated March 28, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 23, 2007. The claimant participated on his own behalf. The employer, PMP, Inc., participated by Field Supervisor Chad Anthony and System Engineer Mark Leonard.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Kyle Roush was employed by PMP, Inc., from November 14, 2005 until March 12, 2007, as a full-time apprentice in heating and air conditioning. On March 12, 2007, the claimant reported for work about ten minutes late with co-worker Jeremy Smith, who was driving a company van. The claimant was in the shop for about 30 minutes when Mr. Smith came out and said they were going home, and he got in the van and went home.

The claimant maintains he was discharged later that afternoon by Mr. Smith over the phone. However, Mr. Smith was only a lead worker and did not have the authority to fire anyone. Mr. Roush did not question Mr. Smith or anyone at the company as to why he was being fired, he merely stopped showing up for work. The employee handbook, which he did receive, states that three days of no-call/no-show to work is considered a voluntary quit.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant stopped coming to work because he maintained he was fired. There is very little in the record to support this, only a statement from another employee, who had no authority to fire him, that they had both been discharged. The claimant apparently did not concern himself over much with this, as he never inquired of any supervisor PMP, Inc., as to why he was fired, either before leaving with Mr. Smith or later. The record establishes the claimant stopped coming to work or calling in. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer LaGrange v. IDJS, (Unpublished, Iowa App. 1984). The claimant quit without good cause attributable to the employer and he is disqualified.

DECISION:

The representative's decision of March 28, 2007, reference 01, is affirmed. Kyle Roush is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw