IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ROGER E ANDERSON
Claimant

WHITE WOLF WEB PRINTERS INC
Employer

APPEAL NO. 09A-UI-19376-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/22/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 17, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 4, 2010. Claimant participated. Employer participated by Kris Namanny, human resources consultant. The record consists of the testimony of Roger Anderson and the testimony of Kris Namanny.

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 a printing company. The claimant was hired on June 26, 2009, as a part-time inserter. The claimant was arrested for OWI in August 2009. As a result of that arrest, he was incarcerated from October 24, 2009 to November 5, 2009. The claimant was a no-call/no-show on October 27, 2009; October 31, 2009; and November 3, 2009. The employer has a written policy that states that if an employee has a no-call/no-show for three consecutive workdays, it is considered a voluntary quit. The claimant was informed of this policy at the time he was hired.

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(16) 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:
>
> (16) The claimant is deemed to have left if such claimant becomes incarcerated.

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 established that the claimant was incarcerated from October 24, 2009 to November 5, 2009. During that time, he was scheduled to work on three different days. He did not call and he did not show up for work on October 27, 2009; October 31, 2009; and November 3, 2009. Iowa law states that if an individual is incarcerated, that individual is presumed to have voluntarily quit his job without good cause attributable to the employer. Accordingly, benefits are denied.

DECISION:

The decision of the representative dated December 17, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/css