

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOMMY CURRY
Claimant

APPEAL NO. 14A-UI-01309-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 01/05/04
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 5, 2014, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit work by failing to report for work for three days in a row and not notifying the employer. After due notice was provided, a telephone hearing was held on February 26, 2014. Claimant participated. The employer participated by Mr. Dan Brackett, General Manager, Iowa City location.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tommy Curry was employed by Menard, Inc. from August 30, 2013 until December 16, 2013 when he voluntarily quit by discontinuing to report for work. Mr. Curry was employed as a part-time yard department employee and was paid by the hour. His immediate supervisor was Steve Bears.

Mr. Curry left his employment with Menard, Inc. in anticipation that he would be discharged for unacceptable attendance. Under the company's attendance policy employees are subject to discharge if they accumulate ten attendance infraction points within a specified period of time. Employees are allowed to remove infraction points by good attendance and the oldest infraction points drop off an employee's record after a specified period of time. The employer takes into consideration medical documentation and some extenuating circumstances before making a decision whether to discharge an employee for violating the company's attendance policy. Mr. Curry was aware of the policy and had received a warning when he had accumulated seven infraction points. The majority of the claimant's absences were due to lack of child care or transportation issues.

Mr. Curry called in on Monday, December 16, 2013 to report that he was again experiencing transportation issues with his vehicle. The claimant elected not to attempt to report late that day, but discontinued reporting thereafter believing that he would probably be discharged based upon the employer's policy and the previous warning that had been served upon him.

At the time of the claimant's leaving the employer had not made a decision to discharge Mr. Curry from employment and the claimant had been scheduled to report to work through January 4, 2014.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Mr. Curry left employment with good cause that was attributable to the employer. It does not.

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(1), (17) 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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

(17) The claimant left because of lack of child care.

In the case at hand Mr. Curry left his employment in anticipation that he was going to be discharged for unacceptable attendance. The claimant had received a warning from the employer when he had accumulated seven attendance infraction points and believed that his absence on December 16, 2013 would exceed the permissible number of attendance infractions allowed by the employer's policy and result in his termination. The claimant had not been told by the employer that he was being discharged but had been warned about his attendance. Although the majority of the claimant's absences during his short period of employment were due to lack of child care and transportation issues, the employer had not made a decision to terminate Mr. Curry at the time that he chose to voluntarily leave his employment with the company. Leaving one's employment in anticipation of future discharge is not a good cause reason attributable to the employer. At the time of Mr. Curry's leaving work continued to be available to him and the employer was willing to at least consider any extenuating

circumstances of his final absences before the claimant would have been discharged from employment. The claimant chose to leave his employment before a discharge decision had been made by the company. While the claimant's reasons for leaving were undoubtedly good cause reasons from his personal viewpoint, they were not good cause reasons attributable to the employer as required by the provisions of the Employment Security Law. Therefore, benefits are denied.

DECISION:

The representative's decision dated February 5, 2014, reference 01, is affirmed. Claimant voluntarily left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs