

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GREGORY WIGGINS**

Claimant

**APPEAL NO: 09A-UI-19146-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRI CITY ELECTRIC CO OF IOWA**

Employer

**OC: 01/11/09**

**Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Gregory Wiggins (claimant) appealed an unemployment insurance decision dated December 14, 2009, reference 03, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Tri City Electric Company of Iowa (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 10, 2010. The claimant participated in the hearing. The employer participated through Sherry Rodriguez, Director of Human Resources and Michael McCutcheon, Superintendent. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time electrical helper from June 29, 2009 through July 24, 2009. He did not return to work after that date because he was incarcerated. The employer's attendance policy provides that an employee is considered a voluntary quit if he is a no-call/no-show for three consecutive workdays. The claimant was a no-call/no-show for three days ending July 29, 2009 and was considered to have voluntarily quit his employment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to call or return to work after July 24, 2009

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 § 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 § 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 was deemed a voluntary quit on July 29, 2009 after three days of no-call/no-show. It is his burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

**DECISION:**

The unemployment insurance decision dated December 14, 2009, reference 03, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/css