

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES M OSWALT**  
Claimant

**APPEAL NO: 10A-UI-15113-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 05/16/10**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

James M. Oswalt (claimant) appealed a representative's November 1, 2010 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from TPI Iowa L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2010. The claimant participated in the hearing. Terry Rock appeared on the employer's behalf. 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:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 13, 2008. He worked full time as a manufacturing associate on the second shift 1:00 p.m. to 9:00 p.m. His last day of work was September 13, 2010.

On September 13 the claimant had been given a final warning for attendance. His supervisor advised him that if in the future he did not show up for work as scheduled, he would be discharged. He attempted to advise his supervisor that he was going to need to make a court appearance the next day due to a September 12 OWI charge, but the supervisor did not wish to discuss the matter.

On September 14 the claimant went into make his court appearance at about 9:00 a.m. He was then held in custody until he could make bail, which did not happen until about 2:00 p.m. As he was already late for work and had been told he would be discharged if he was not to work on time, he did not bother reporting back to work, assuming he had been discharged.

**REASONING AND CONCLUSIONS OF LAW:**

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not “voluntary” as he had not desired to end the employment; he argues that it was the employer’s action or inaction by failing to allow him to be late due to the court appearance which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as failing to report for scheduled work due to a belief the employee would be discharged, where the employer had not yet made a discharge decision<sup>1</sup>. 871 IAC 24.25.

The claimant ceased reporting for work prior to being told he had been discharged; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

**DECISION:**

The representative’s November 1, 2010 decision (reference 02) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of September 14, 2010, benefits are withheld until such time as 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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<sup>1</sup> If the separation was viewed as a discharge, the final occurrence of being late on September 14 due to being held in custody would not be treated as an “excused” absence, for purposes of determining whether it would have been a discharge for misconduct. 871 IAC 24.32(7). The claimant’s final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984).