

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD D DHABOLT
Claimant

APPEAL NO: 10A-UI-13631-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUNNINGHAM INC
Employer

OC: 06/20/10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Donald D. Dhabolt (claimant) appealed a representative's September 22, 2010 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Cunningham, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 9, 2010. The claimant participated in the hearing. Denise Spurgeon 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 July 1, 2010. After orientation, as of July 6 he worked full time as a laborer in the plumbing division of the employer's mechanical contracting business. The job was intended to be temporary through at least mid-September, although the position could have become permanent. His last day of work was July 16.

The claimant's nephew in Texas was killed in a car accident, and the claimant went to Texas to be with his family. On the mornings of July 19, July 20, and July 21 the claimant either called or texted his program manager or his superintendent to indicate he would be absent; he may not have been specific regarding the facts of the situation. On July 21 he had specifically indicated that he would also be absent on July 22, and he intended on coming back on July 23. He did not get a response to his message on July 21. On July 22 he did not send a morning message, but sent a message in the evening confirming that he was intending on returning on July 23. Upon his return to Iowa on the morning of July 23 he again sent a text message asking if it was okay for him to return to work; he did not get a response to any of his messages on July 21, July 22, or July 23.

The claimant assumed that the program manager or superintendent had received his text message inquiries about returning to work and had chosen not to respond because they were mad at him; there is no direct evidence that either of the managers had received the claimant's final text messages. He then sent a message to his cousin who also worked for the employer to ask what was going on; his cousin responded that he "had heard" that the claimant "was not working there anymore." He did not then seek to call any of the employer's managers, including the human resources manager, Ms. Spurgeon, with whom the claimant had previously discussed an absence, to directly inquire via voice as to his status, but rather assumed 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 in not responding to his text message inquiries about returning 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 where an employee believes he has been discharged and therefore ceases reporting for work, but where the employer has not directly informed him he has been discharged. 871 IAC 24.25(33).

The claimant was never informed by the employer that he was discharged, yet ceased reporting for work; 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. While the claimant may have had compelling personal reasons for being away from work during the week of July 19, he did not return to work within ten days. 871 IAC 24.25(20). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's September 22, 2010 decision (reference 02) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 19, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css