

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLIFTON R HENDERSON
Claimant

APPEAL NO. 08A-UI-06015-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST WEST STAFFING LLC
Employer

**OC: 05/25/08 R: 04
Claimant: Appellant (1)**

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Clifton Henderson filed a timely appeal from the June 26, 2008, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on July 16, 2008. Mr. Henderson provided a telephone number for the hearing, but was not available at that number at the time of the hearing. Michelle Mutchler, On-site Manager, represented the employer.

ISSUE:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes that the claimant voluntarily quit.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Clifton Henderson was employed by East West Staffing, L.L.C., as a full-time production worker from February 21, 2007 until October 19, 2007. East West Staffing contracts with the Scotts Company in Fort Madison to provide production personnel. Mr. Henderson was an East West Staffing employee assigned to work at the Scotts Company. Mr. Henderson was assigned to an overnight shift, 10:00 p.m. to 6:30 a.m., Sunday evening through Friday morning. On October 15, 2007, Mr. Henderson notified the employer that he would be absent from work, but provided no reason for the absence. On October 16, 17, and 18, Mr. Henderson was absent from work, but failed to notify East West Staffing or the Scotts Company that he would be absent.

East West Staffing provided Mr. Henderson with an employee handbook on February 21, 2007. The employee handbook provided the absence notification policy. The absence notification policy required that Mr. Henderson notify the Scotts Company at least one hour prior to the scheduled start of his shift. The policy also required that Mr. Henderson notify East West Staffing at least 30 minutes prior to the scheduled start of his shift. The employee handbook also contained a provision regarding “no-call, no-show” absences. That policy indicated, among other things, that an employee absent from work for three consecutive days without notifying the employer would be deemed to have voluntarily quit the employment.

After Mr. Henderson was absent for three consecutive days without notifying the employer, he appeared to collect his paycheck on October 19, 2007. At that time, the employer notified Mr. Henderson that it deemed him to have abandoned the employment.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Mr. Henderson quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). 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.

Where an employee is absent from work for three days without giving notice to the employer, the employee is presumed to have voluntarily quit the employment, provided the employer has a policy that put the employee on notice that the absences would be deemed a voluntary quit. See 871 IAC 24.25(4).

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.

The greater weight of the evidence indicates that Mr. Henderson voluntarily quit the employment by being absent three consecutive days without notifying the employer, in violation of the employer's policy regarding “no-call, no-show” absences.

Mr. Henderson's voluntarily quit was without good cause attributable to the employer. Accordingly, Mr. Henderson is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Henderson.

DECISION:

The Agency representative's June 26, 2008, reference 03, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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