

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXANDER DAYWAY
Claimant

APPEAL NO. 10A-UI-13470-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN SECURITY CORP
Employer

OC: 08-29-10
Claimant: Appellant (1/R)

Section 96.5-1 - Voluntary Leaving
871 IAC 24.25(4) - Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 22, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 9, 2010. The claimant participated in the hearing with Interpreter Laura Solo. Greg Willey, Director of Operations, and Ray Monson, Area Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the claimant's voluntary separation from his part-time employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time security officer for American Security Corporation from January 19, 2010 to July 12, 2010. He was deemed to have voluntarily quit his employment after three days of no-call, no-show. The claimant was a no-call, no-show May 26, 2010 and again on June 18, 2010. He received verbal warnings June 19, 2010 and July 2, 2010, for reporting late to work. The claimant did not report for work July 7, 2010, but did come in later and was advised he would receive a written warning July 8, 2010. The claimant did not return to work after that and was considered to have quit as of July 10, 2010. He called the employer July 12, 2010, and was advised the employer considered he had quit his employment and he said, "Good, fine."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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(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 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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 return to work after July 7, 2010. He was deemed a voluntary quit July 10, 2010, after three days of no-call, no-shows and the claimant has failed to demonstrate his no-call, no-shows were attributable to the employer. Therefore, benefits are denied from this employer.

However, an individual who quits part-time employment without good cause yet is otherwise monetarily eligible based on wages paid by other base-period employers shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or his maximum weekly benefit amount.

DECISION:

The September 22, 2010, reference 01, decision is affirmed. The claimant voluntarily quit his part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what his maximum weekly benefit amount is when the wage credits the claimant earned from this employer are not taken into consideration to determine these two issues.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw