

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY M TERRELL
Claimant

APPEAL NO. 10A-UI-17789-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

OC: 11/28/10
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 22, 2010, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on February 7, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Julie Kilgore participated in the hearing on behalf of the employer with witnesses, Betty Jones and Susan Kirstein.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a transporter from June 8, 2009, to November 22, 2010. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have voluntarily quit employment after three days of absence without notice to the employer. The claimant had been warned about being absent without proper notice on July 22, 2010, after he was absent without calling in on July 21. This was his second no-call, no-show and he was warned that if it happened again, he could be terminated.

The claimant was scheduled to work on November 23, 24, and 29, 2010. He was absent from work each day and did not call the employer to notify the employer that he would not be at work. On November 24, the claimant's supervisor, Betty Jones, called him to see if he coming to work. The claimant said he was not but did not provide any excuse for his absent. He said he had not called in because he did not have any minutes on his cell phone.

After the claimant failed to report to work or call in on November 29, the employer sent him a letter stating that the employer deemed him to have voluntarily quit because he had been absent November 23, 24, and 29, 2010, without notice to the employer.

On November 30, 2010, the claimant reported to work as scheduled. He was informed by the chief nursing officer that he was a no-call, no-show November 23, 24, and 29 and had been sent a letter about his voluntary termination the day before. When the claimant asserted he had

called on November 29, the chief nursing officer said the employer had not received a call, asked for the claimant's badge, and escorted him off the premises.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe the claimant's testimony that he reported to work on November 29. This testimony is outweighed by the credible testimony of the chief nursing officer who documented that the claimant had come to work on November 30.

The unemployment insurance rules state that a claimant absent for three days without giving notice to employer in violation of company rule is presumed to have quit employment without good cause attributable to the employer. 871 IAC 24.25(4). This rule applies in this case, which means the claimant is disqualified from receiving unemployment insurance benefits.

Even if the separation was treated as a discharge, the claimant would be disqualified. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's absences without notice on three days in a row were willful and material breaches of the duties and obligations to the employer and substantially disregarded the standards of behavior the employer had the right to expect of the claimant. Running out of cell phone minutes would not be a legitimate reason for not notifying the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated December 22, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs