

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLARENCE L CLARK**

Claimant

**APPEAL NO. 12A-UI-02530-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**

Employer

**OC: 01/29/12**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated March 7, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 29, 2012. The employer participated by Sarah Fiedler, claims administrator. The claimant failed to respond to the hearing notice and did not participate in the hearing. The record consists of the testimony of Sarah Fiedler.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing agency that provides both temporary employees and temps to hire for its clients. The claimant had a long-term assignment at Winegard, which is located in Burlington, Iowa. The claimant worked 40 hours per week as an assembler. The claimant's last day of work was January 11, 2012. He was a no-call/no-show on January 12, 2012; January 13, 2012; and January 16, 2012. On January 17, 2012, the claimant's wife called the employer to state that he was incarcerated and she did not know when he would be released.

The employer has a written policy, of which the claimant was aware, that if three consecutive work days are missed without notifying the employer, the employee would be considered a voluntary quit.

**REASONING AND CONCLUSIONS OF LAW:**

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) and (16) provide:

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.

. . .

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

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.

The evidence in this case established that the claimant missed three consecutive work days without notifying the employer. The days missed were January 12, 2012; January 13, 2012; and January 16, 2012. Three instances of no-call/no-show is considered a voluntary quit pursuant to the employer's which policy. The claimant would also be disqualified on the basis of his incarceration. An individual who is incarcerated is also considered to have voluntarily quit his job. The claimant did not participate in the hearing and therefore his version of events is unknown. Since the claimant is deemed to have voluntarily quit his job without good cause attributable to the employer, benefits are denied.

#### **DECISION:**

The representative's decision dated March 7, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until 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.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/kjw