

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NASH BROWN**  
Claimant

**APPEAL NO: 14A-UI-01285-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCOTT IRISH**  
Employer

**OC: 12/22/13  
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 29, 2014, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 26, 2014. The claimant participated in the hearing. Scott Irish, Office Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left his employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer for Bernet Construction from August 1, 2013 to December 23, 2013. The employer considered him to have voluntarily quit his job by failing to call or show up for work for three consecutive days in violation of the employer's policy.

It is the employer's practice for employees to call Office Manager Scott Irish in the morning to find out where they would be working that day unless they were continuing to work at the same job site for a few days. The claimant's foreman December 18, 2013, the last job he worked, was Thad Harper. Mr. Harper does not assign work duties and does not have the authority to lay an employee off work.

On December 18, 2013, the claimant approached foreman Thad Harper because the weather was getting colder and asked if they had to work in the cold weather given that they belonged to a labor union. The claimant testified the weather was "a little cold for my blood." The claimant asked if he could file for unemployment insurance benefits and Mr. Harper indicated he could but the employer was still busy at that time and was still working Saturdays in an effort to finish projects that would allow contractors to work during the winter and other laborers in the claimant's position were not laid off until the end of the year. The claimant did not check with Mr. Irish and did not call in or show up for work December 19, 20 or 23, 2013. Mr. Irish attempted to call the claimant December 23, 2013, to ask why he had not been at work and tell him his services were still needed but the claimant had not provided the employer with his

updated phone number and he is not sure if he missed the call. The claimant stated he did not call the employer back because he was "skating and enjoying being laid off and was counting on receiving unemployment" insurance benefits.

**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.

The claimant initiated the conversation regarding whether he could be laid off and receive unemployment insurance benefits with Mr. Harper. Although Mr. Harper was the foreman on the last job the claimant worked, he did not assign the claimant work and did not have the authority to lay employees off for the winter. The claimant knew, or should have known, that Mr. Irish managed the employees with regard to work assignments and items of a similar nature and that he was not laid off until told so by Mr. Irish. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, he is considered to have voluntarily left his employment without good cause attributable to the employer. Therefore, benefits are denied.

**DECISION:**

The January 29, 2014, reference 04, decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs