

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J LECKNESS

Claimant

APPEAL NO. 10A-UI-16549-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC

Employer

OC: 10/31/10

Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

David Leckness (claimant) appealed a representative's December 1, 2010 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Beef Products (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 21, 2011. The claimant participated personally. The employer participated by Rick Wood, Human Resources Manager, and Bailey Peak, Human Resources Coordinator.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 13, 2007, as a full-time laborer. The claimant signed for receipt of the employer's handbook on November 13, 2007. The handbook contained a policy that three days of failure to report an absence would be considered a voluntary quit.

The claimant had a pattern of absenteeism near weekends. On October 25, 2010, the employer met with the claimant to issue the claimant a warning and three-day suspension. The employer read the suspension to the claimant and the claimant signed for receipt. The claimant was to return to work on October 29, 2010. On October 29, 2010, the claimant properly notified the employer of his absence due to illness. On October 30, November 1, and November 2, 2010, the claimant did not appear for work or notify the employer of his absence. The employer considered the claimant to have quit work. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work 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) and (28) 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.

(28) The claimant left after being reprimanded.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his actions. The claimant was absent from work for three days without giving notice to the employer. The employer has a rule that if the employee is absent without notice to the employer for three days, the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on his absence from work for three days without giving notice to the employer.

When an employee quits work after having been reprimanded, his leaving is without good cause attributable to the employer. The claimant left work after having been reprimanded. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible. The employer provided two eyewitnesses to the suspension meeting.

DECISION:

The representative's December 1, 2010 decision (reference 02) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw