IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

STEVEN MCALEER
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GOOSE LAKE IA 52750

FASTENAL CO INC
ATTN PAYROLL DEPT
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WINONA MN 55987-0978

Appeal Number: **05A-UI-06060-BT**
OC: 12/26/04   R: 01
Claimant: Respondent (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor— Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY
1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Steven McAleer (claimant) appealed an unemployment insurance decision dated May 31, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Fastenal Company, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2005. The claimant participated in the hearing. The employer participated through Dan Beer, District Sales Manager.

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 as a full-time outside sales person in the Clinton, Iowa branch on October 18, 2004. He worked on April 8 and was absent on April 11 and April 12 due to illness. He admitted himself into in-patient treatment for substance abuse on April 13, 2005. His wife reportedly called the employer that day and asked if the claimant could take leave under the Family Medical Leave Act (FMLA). The claimant was not eligible for leave under the FMLA, so the employer reported that the claimant's sick and vacation days would be used. He exhausted his vacation and sick days as of April 22. Although the claimant was in the hospital undergoing treatment, he worked for the employer on April 27 at an open house and then went back into the hospital.

The employer had requested, but had not received, a medical excuse. When the employer did not hear anything from the claimant, a letter was sent on May 3 advising him that a medical excuse was needed to excuse his time from April 25 to the present. The letter advised the claimant he had until May 6, or he would be considered to have voluntarily quit. Unbeknownst to the employer, the claimant reportedly requested the medical documentation from his counselor. No documentation was sent to the employer and the claimant did not contact the employer to advise that he had requested it and was waiting on the medical provider to send it. His voluntary resignation was therefore accepted as of May 6.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1.

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. The claimant did express his intent not to return work with the employer. 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 demonstrated his intent to quit and acted to carry it out by failing to contact the employer prior to the deadline date given to him to provide a medical excuse. Only an employee's objective words and actions can be evaluated when determining whether the intent to quit exists. The claimant contends he requested the medical information but admits he did not follow up with the employer. It was the claimant's responsibility to maintain contact with the employer to ensure the documentation was sent by the deadline date, and, if it could not be sent by that date, the claimant could have simply notified the employer the information had been requested. There was no valid reason for the claimant not calling the employer. When the employer had not received any documentation or heard from the claimant after sending the May 3 letter, his objective actions, or lack thereof, could only be interpreted as a voluntary resignation.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

DECISION:

The unemployment insurance decision dated May 31, 2005, reference 01, is modified with no effect. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/kjw