

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD J JOHNSON
Claimant

APPEAL NO: 06A-UI-08835-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

**OC: 07/30/06 R: 02
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Ronald Johnson (claimant) appealed a representative's August 28, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Dee Zee (employer) for excessive unexcused absenteeism. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2006. The claimant participated personally. The employer participated by Goran Surlan, Payroll Administrator; Tom Weatherell, Quality Engineer; Sarah Tew, Human Resources Assistant; and Barbara Wright, Safety Director.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer and, therefore, is not eligible to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 27, 2004, and at the end of his employment was working as a full-time quality technician. The claimant worked on June 15, 2006, and was then incarcerated. On June 16, 2006, the claimant's fiancée notified the employer that he was incarcerated. The claimant did not appear for work or notify the employer of his absence on June 19, 20, 21 or 22, 2006. The employer has a policy that states that an employee will be deemed to have quit if is absent for three days and does not inform the employer of his absence. On June 23, 2006, the employer mailed the claimant a letter of separation. Continued work was available had the claimant appeared for work.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer and is not eligible to receive unemployment insurance benefits.

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 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. He did not appear for work. The claimant was absent from work for more than 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 more than three days without giving notice to the employer.

In addition, if an employee does not appear for work because he is incarcerated, his leaving is without good cause attributable to the employer. The claimant did not appear for work because he was incarcerated. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's August 28, 2006 decision (reference 01) is affirmed. 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/cs