

**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**

**TIMOTHY A FIELDS  
800 N 35<sup>TH</sup> ST #14  
COUNCIL BLUFFS IA 51501**

**OWEN INDUSTRIES INC  
PO BOX 1085  
OMAHA NE 68101-1085**

**Appeal Number: 04A-UI-06546-RT  
OC: 05-16-04 R: 01  
Claimant: Appellant (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Timothy A. Fields, filed a timely appeal from an unemployment insurance decision dated June 2, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on July 9, 2004 with the claimant not participating. Although the claimant did call in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge twice tried to call the number at 11:02 and 11:03 a.m., no one ever answered. The telephone number called in by the claimant was the same number as in Iowa Workforce Development records. Brad Johnson, Vice President of Human Resources, and David Justesen, Shop Supervisor, participated in the hearing for the employer, Owen Industries, Inc.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time machine operator from October 10, 1979 until he separated from his employment on May 11, 2004. The claimant was a good employee and attended regularly until recently when he began to have severe domestic problems. The claimant was frequently absent for these personal problems and on two occasions the claimant failed to notify the employer of an absence or was a no-call/no-show, April 14 and April 30, 2004. The employer tried to work with the claimant because he was a long time employee. Nevertheless, on May 6, May 7 and May 10, 2004, the claimant was absent without notifying the employer. The employer has a rule in its handbook, a copy of which the claimant received and for which he signed an acknowledgement, providing that three consecutive absences in a row, without notifying the employer or as a no-call/no-show, would be considered a voluntary quit. When the employer did not hear from the claimant for those three days, the employer sent the claimant a letter dated May 11, 2004 indicating that they considered the claimant to have voluntarily quit. The claimant received this letter and it was only then that he called the employer. At that time, he was told that he was considered a voluntary quit. The claimant never expressed any concerns to the employer's witness, Brad Johnson, Vice President of Human Resources, about his working conditions nor did he do so to anyone that Mr. Johnson heard about. The claimant also never indicated or announced an intention to quit to Mr. Johnson if any problems he was having at work were not addressed by the employer nor did he do so to anyone else that Mr. Johnson heard about. If the claimant had attended work properly or called in his absences, work would have remained available for him.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a, (7) provide:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The first issue to be resolved is the character of the separation. The employer maintains that the claimant left his employment voluntarily when, in violation of the employer's policy, the claimant was absent for three consecutive days without notifying the employer. The claimant did not participate in the hearing but implies that he was discharged. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left his employment voluntarily when he was absent for three days in a row without notifying the employer. In fact, the evidence establishes that the claimant was absent for more days than that in a row without notifying the employer

and only notified the employer after receiving a letter from the employer dated May 11, 2004 informing the claimant that his absences without notifying the employer were considered a voluntary quit. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily on May 11, 2004. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for his quit. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. A claimant who is absent for three days without giving notice to the employer, in violation of the employer's rule, is considered a quit without good cause attributable to the employer. There is no evidence that the claimant ever expressed any concerns to the employer about his working conditions or that he ever indicated or announced an intention to quit if any problems he was having at work were not addressed by the employer.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for excessive unexcused absenteeism which is disqualifying misconduct. The evidence establishes that the claimant was absent as a no-call/no-show on April 14 and April 30, 2004 as well as the three plus days giving rise to his quit on May 6, May 7 and May 10, 2004. Even assuming that these absences were for good cause, an assumption which the administrative law judge does not make, these absences were not properly reported to the employer and would be excessive unexcused absenteeism and disqualifying misconduct. Therefore, even should the claimant's separation be considered a discharge, the administrative law judge would conclude that the claimant was discharged for disqualifying misconduct and would still be disqualified to receive unemployment insurance benefits and would not be entitled to unemployment insurance benefits, until or unless he requalifies for such benefits.

#### DECISION:

The representative's decision of June 2, 2004, reference 01, is affirmed. The claimant, Timothy A. Fields, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

tjc/b