

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAURICE J WASHINGTON**  
Claimant

**APPEAL NO. 12A-UI-03654-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**  
Employer

**OC: 03/04/12**  
**Claimant: Appellant (5)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Maurice Washington filed a timely appeal from the April 2, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 25, 2012. Mr. Washington participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

**ISSUE:**

Whether Mr. Washington separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer provides overnight sanitation services at a Tyson packing plant in Waterloo. Maurice Washington was employed by Packers Sanitation Services, Inc., as a full-time sanitation worker from September 2011 and last performed work for the employer on the shift that started Thursday evening, February 9, 2012. Mr. Washington's usual work hours were 11:30 p.m. to 6:30 a.m., Monday evening through Saturday morning. Mr. Washington's immediate supervisor was Terrell Johnson.

On Friday, February 10, 2012, Mr. Washington was absent from his shift due to illness. If Mr. Washington needed to be absent from work, the employer's policy required that he telephone a designated number at least an hour before the scheduled start of his shift. Mr. Washington left a message for the employer on the evening of February 10.

Mr. Washington was next scheduled to work on Monday evening, February 13, 2012. After Mr. Washington was absent from his shift on February 10, he did not return to work. Mr. Washington had received prior written warnings for attendance and a recent warning had indicated he would be discharged if there were additional absences. Mr. Washington did not make further contact with the employer to see whether in fact the employer would follow through with discharging him in connection with the most recent absence. Instead, Mr. Washington just assumed he would be discharged. The employer never actually communicated to

Mr. Washington that he was in fact discharged from the employment. Mr. Washington telephoned the employer a week later for the sole purpose of inquiring about his paycheck. Mr. Washington was not able to reach someone at that time. In the week that followed, Mr. Washington appeared at the workplace for the sole purpose of returning his work equipment and collecting his final paycheck.

While Mr. Washington does not cite this as the basis for his separation from the employment, Mr. Washington disliked the employer's practice of issuing reprimands to him for what the employer perceived as performance issues. Such reprimands would result in Mr. Washington losing out on bonus or "sunshine" money.

While Mr. Washington does not cite this as the basis for his separation from the employment, Mr. Washington found aspects of the work difficult to perform in light of his diabetes.

### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence establishes that Mr. Washington was not discharged from the employment, but instead voluntarily quit the employment. The employer may have warned Mr. Washington that he would face discharge from the employment if he was absent again, but the employer never in fact communicated to Mr. Washington that he was discharged from the employment. Instead, Mr. Washington assumed he was discharged and made no contact with the employer to discuss his work status. A reasonable person desiring to continue in the employment would have returned to work or at least contacted the employer to clarify his employment status.

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.

The weight of the evidence establishes a voluntary quit that was without good cause attributable to the employer. The evidence fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment. See 871 IAC 24.26(4). Mr. Washington is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is

otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Washington.

**DECISION:**

The Agency representative's April 2, 2012, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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