

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AARON D STOTTLEMIRE
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 15R-UI-05935-DGT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/25/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 12, 2015, (reference 02) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 13, 2015. Claimant participated. Employer participated by Michael Payne, Risk Manager.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 29, 2014. Claimant was picked up on an arrest warrant and was placed in jail on or about that date. Claimant was scheduled to work on September 1 through September 3, 2014. Claimant did not call into work or show up for scheduled work on each of those days. Employer tried to call claimant on September 2, 2014, but the call went right to voice mail. Claimant did come in two hours late on September 3, 2014 after the employer had already hired a replacement.

Employer does have a three-day no-call/no-show policy that provides notice to employees that three no-call/no-shows on consecutive scheduled days of work will be considered job abandonment, and treated as a quit from employment. Claimant was provided a copy of this policy at the time of hire.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship by failing to call into work or show up for scheduled work for three consecutive scheduled days.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(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 § 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 § 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

In the context of the Iowa Employment Security Law, the separation is considered a quit. An individual who does not report to the employment because of incarceration is presumed to have quit without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25(16). An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The claimant's incarceration on multiple scheduled workdays was not a good-cause reason for the separation attributable to the employer. Employer's attribution of the absences as a voluntary leaving of employment was reasonable as it is not expected to hold employment for incarcerated employees.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

DECISION:

The decision of the representative dated February 12, 2015, (reference 02) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/css