

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK L SCHROEDER JR
Claimant

APPEAL NO. 10A-UI-00479-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC
Employer

**OC: 11/15/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 5, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 16, 2010. Claimant participated. Employer participated by Laura Althouse, payroll and human resources assistant. The record consists of the testimony of Mark Schroeder and the testimony of Laura Althouse.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired on January 22, 2009, as a full time sanitation worker. His last day of work was November 7, 2009. He quit his job on November 20, 2009.

The claimant had missed so many days from work that he had received both a written warning and a suspension. There was a miscommunication between the claimant's supervisor and the human resources office on when the claimant's suspension was to end. The claimant's supervisor changed the date the claimant was supposed to return to work and this change was not reported to human resources. As a result, human resources thought the claimant failed to return to work when scheduled after the suspension and was therefore terminated.

Laura Althouse discovered the mix-up and called the claimant to let him know that he had been reinstated. The claimant told Ms. Althouse that he would have to discuss this with his wife. The claimant did not call Ms. Althouse back. She then left three messages for him, all of which he failed to return. Since the claimant had failed to contact the employer, he was considered to be a voluntary quit as of November 20, 2009.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

Although the claimant was originally terminated for an attendance violation, he was reinstated by the employer and told that he could return to work. The claimant told the employer that he would have to discuss this with his wife. He never contacted the employer and never returned calls placed to him by the employer. When questioned, he admitted that he made the decision not to return to work. His reason was that it did not seem right to him that he could come back to work and other employees who had been terminated could not.

When the evidence is viewed in its totality, the administrative law judge concludes that it was the claimant who ultimately severed the employer/employee relationship. He did so by failing to come back to work after he was reinstated. He made the decision not to return to work. The employer could logically assume that the claimant had abandoned his job and was a voluntary quit. The reason for not coming back to work as articulated by the claimant does not constitute good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated January 5, 2010, reference 01, 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs