

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL D HALLER**  
Claimant

**APPEAL NO: 10A-UI-15162-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER LOGISTICS INC**  
Employer

**OC: 10/03/10**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Michael D. Haller (claimant) appealed a representative's October 29, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Schenker Logistics, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 13, 2010. The claimant participated in the hearing. Nicki Brick appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 8, 2010. He worked full time as forklift operator on a 6:00 a.m. to 6:00 p.m. shift on a rotating day schedule. His last day of work was September 22. He called in sick on September 25 and September 26. He was scheduled to work on September 27 and two other days thereafter, but did not call or report for work until midday on October 1.

The claimant had been given a seven-point warning for attendance on September 8. He had one point after that for a two-day absence excused with a doctor's note, and had received a point each day for his call-ins on September 25 and September 26, bringing him to ten points. The employer's attendance policy provides for discharge if an employee exceeds ten points. On September 27 the claimant overslept, waking at about noon. He believed that if he reported for work he would be given an additional point or half point for that occurrence, and would be discharged, and so did not bother calling or reporting for work.

About midday on October 1 the claimant received a phone call from his immediate supervisor asking where he was. The supervisor stated that the claimant had not been discharged, that he should come in for work. The claimant therefore came in for work. However, upon his arrival he spoke with the operations manager, who indicated that the claimant no longer had a job because he was deemed to have abandoned his job by failing to call or report for work.

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

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not “voluntary” as he had not desired to end the employment; he argues that it was the employer’s action or inaction of telling him to come in on October 1 and then sending him home which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as failing to report for scheduled work due to a belief the employee would be discharged, where the employer had not yet made a discharge decision<sup>1</sup>. 871 IAC 24.25.

The claimant ceased reporting for work prior to being told he had been discharged; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

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<sup>1</sup> If the separation was viewed as a discharge, the final occurrence of being late on September 27 due to oversleeping would not be treated as an “excused” absence, for purposes of determining whether it would have been a discharge for misconduct. 871 IAC 24.32(7). The claimant’s final absence was not excused and was not due to properly reported illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984).

**DECISION:**

The representative's October 29, 2010 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of September 27, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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