

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT E BURNS
Claimant

APPEAL NO. 15A-UI-04867-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 03/22/15
Claimant: Respondent (1-R)

871 IAC 24.26(13) – Leaving Employment/Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated April 16, 2015, reference 02, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was discharged under non disqualifying conditions. After due notice was provided, a telephone hearing was held on June 2, 2015. Although duly notified, the claimant did not participate. The employer participated by Ms. Coleen McGinty, Unemployment Insurance Administrator and Mr. Randy Webster, Site Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Robert Burns was employed by the captioned temporary employment company from July 30, 2012 until March 26, 2015 when he failed to report and did not provide any notification to the employer of his impending absence for his last day of work that was scheduled to be March 27, 2015. Mr. Burns was employed as a production line supervisor and assigned to the RockTenn client employer. Mr. Burns' assignment with the RockTenn Company began on November 11, 2013. His immediate supervisor was Randy Webster, Site Manager.

On March 26, 2015, Mr. Webster, the Site Manager, informed the claimant that the claimant's assignment at the RockTenn Company would end at the completion of Mr. Burns' night shift scheduled for March 27, 2015. The temporary employer expected Mr. Burns to report for the final night's work before being laid off because the assignment with the client was ending.

Although Mr. Burns was aware that he was expected to report to work for the final night, he did not report to the client location and did not provide any notice to L A Leasing as to why he was not reporting for scheduled work that night. L A Leasing policy requires that employees notify

the temporary employment service at least 30 minutes before the beginning of their work shift of any impending absences. Company policy provides that one occasion of failure to report without notification is considered to be a voluntary quit by the company.

The employer asserts that because Mr. Burns was absent for his work shift on March 27, 2015, he voluntarily quit his employment without good cause attributable to the employer by being absent for work without notification on one occasion.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Mr. Burns left his employment with good cause attributable to the employer. It does.

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. 871-24.26(13) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

Iowa Admin. Code r. 871-24.25(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.

In the case at hand, Mr. Burns had been informed on March 26, 2015 of his layoff from work to be effective at the end of his work shift the following night, March 27, 2015. For reasons unknown the claimant did not report for that last scheduled work shift and did not provide notice to the employer of his impending absence. It is the employer's position that the claimant quit work without good cause attributable to the employer because the company has a rule that if an

employee fails to report or provide notification to the employer of his impending absence on one occasion, the employer considers that the worker has voluntarily quit employment with the company.

Iowa Administrative Code 871 24.25(4) provides that an employee is considered to have voluntarily quit employment without good cause attributable to the employer if the employee was absent for three consecutive work days without giving the employer notice of his or her absences. The administrative law judge concludes that because the employer's policy presumes that an employee has quit after one occasion of not reporting or providing notification, it is not in compliance with the provisions of the Iowa Administrative Code and not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. One unexcused absence without a demonstrable history of unexcused absences or warnings is not disqualifying as it does not meet the excessiveness standard of the law.

A claimant who is told of a scheduled future layoff and leaves employment before the layoff date is deemed not available for work until the future separation date that was designated by the employer. After the employer-designated date, the separation is considered a layoff. (See 871 IAC 24.26(13).

Upon application of the facts of the appropriate law, the administrative law judge concludes the claimant left employment with good cause attributable to the employer when the claimant's assignment at the RockTenn company ended and he was laid off from work under non disqualifying conditions. The claimant is considered not to have been available for work on March 27, 2015, the day before the employer-designated layoff date. The administrative law judge finds the claimant left employment with good cause attributable to the employer after being laid off work. The issue of whether the claimant has been overpaid unemployment insurance benefits for the day of March 27, 2015 is remanded to the Claims Division for investigation and determination.

DECISION:

The representative's decision dated April 16, 2015, reference 02, is affirmed as modified. The portion of the determination finding that the claimant was separated under non disqualifying conditions is affirmed. The portion of the determination finding the claimant was discharged for misconduct is modified to find that the claimant left employment with good cause attributable to the employer. The issue of whether the claimant has been overpaid unemployment insurance benefits for the day of March 27, 2015 is remanded to the Claims Division for determination. The adjudicator's decision is affirmed as modified.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs