

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT STAMP

Claimant

APPEAL NO: 09A-UI-10135-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GUARDIAN INDUSTRIES CORP

Employer

OC: 06/07/09

Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Scott Stamp (claimant) appealed an unemployment insurance decision dated July 8, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Guardian Industries Corporation (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 31, 2009. The claimant participated in the hearing. The employer participated through Kirsten Regenwether, Human Resources Coordinator and Mark Dehlman, Human Resources Manager. Claimant's Exhibit A was admitted into evidence. 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:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time glass handler from January 7, 2008 through May 29, 2009 when he voluntarily quit. He tested positive for marijuana in a random drug test taken on May 26, 2009. The claimant was going to be placed on unpaid suspension on May 29, 2009 pending his option to have a second test of the split sample taken on May 26, 2009. Failure to proceed with the second test would result in his termination. The claimant knew the second test of the split sample would be positive and thought he could qualify for unemployment insurance benefits if he voluntarily quit before the employer took further action. The claimant was not going to be discharged at the time he voluntarily quit, although it was likely to happen in the future.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by telling the human resources manager on May 29, 2009 that he voluntarily quit. He quit his employment because he believed that he would be able to get unemployment insurance benefits, since he knew that his second sample drug test would also be positive for marijuana. The claimant's voluntary separation is not attributable to the employer.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated July 8, 2009, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs