

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD J FLOWERS
Claimant

APPEAL NO: 11A-UI-14025-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOHL'S DEPARTMENT STORES INC
Employer

OC: 09/25/11

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Edward J. Flowers (claimant) appealed a representative's October 14, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Kohl's Department Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 18, 2011. The claimant participated in the hearing. Brian Kreager appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely or are there legal grounds under which it should be treated as timely? 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 August 20, 2010. He worked part time as a member of the truck unloading team at the employer's Burlington, Iowa area store, averaging about six to twelve hours per week. His last day of work was July 12, 2011.

The claimant was scheduled for work shortly after July 12, but called the employer and spoke to the operations assistant manager, Kreager, to report that he was on his way to Chicago to be with his mother who was ill and that he would need some time off. Kreager responded that the claimant should do what he needed to do; the claimant was to let Kreager know what he needed for time, and was to let Kreager know when he was ready to return to work.

Towards the end of July the claimant again contacted Kreager and indicated he was going to be ready to come back to work in early August. Kreager arranged for the claimant to be put back

on the schedule, and he was scheduled for work on August 2, August 3, August 4, and August 6. The claimant was a no-call, no-show for all of these shifts; apparently he had not in fact been ready to return from Chicago, but had not advised the employer that his plans had changed. The employer considered the claimant to have voluntarily quit by job abandonment by being a two-day no-call, no-show under the employer's policies.

On August 8 the employer sent a letter to the claimant advising him that it considered the claimant's employment ended. The claimant learned of the letter about a week or two later when one of the claimant's neighbors picked up his mail and read the letter to him on the phone. The claimant did not return to the Burlington area until about the end of September or the beginning of October. A few weeks after returning, he called Kreager to clarify his status; Kreager confirmed that the employer considered the employment ended because the claimant had failed to call or report for scheduled 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.

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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, a three-day no-call, no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The employer's policy does not comply with this rule, however, as it infers an intent to quit after only two days. However, another example of where an intent to quit can be inferred is where a person in general fails to report and perform duties as assigned. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out by failing to report or contact the employer for any of the days beginning August 2 that he had been scheduled for work. Further, the claimant's stated understanding that he could "take as much time" as he wanted with no expectation of communication with the employer is not reasonable. Also, his failure to contact the employer to question his status until about a month after learning of the letter advising him that he was considered to have quit is further conduct consistent with an exhibition of an intent to quit. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving employment to deal with serious family responsibilities is a good personal reason for leaving, but not one attributable to the employer. 871 IAC 24.25(23). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's October 14, 2011 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of August 6, 2011, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs