

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES ESTERS

Claimant

APPEAL NO: 10A-UI-00717-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET MFG INC

Employer

OC: 12/06/09

Claimant: Appellant (1)

Iowa Code Section 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

James Esters (claimant) appealed an unemployment insurance decision dated January 15, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Bertch Cabinet Manufacturing, Inc. (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 February 8, 2010. The claimant participated in the hearing. The employer participated through Mitzi Tann, Human Resources Director. Employer's Exhibits One and Two were 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 component/machining/assembly apprentice from April 28, 2008 through January 21, 2009. The employer's attendance policy provides that an employee is considered a voluntary quit if he is a no-call/no-show for three consecutive workdays.

The claimant called in sick on January 13, 14, and 18, 2009. He was subsequently a no-call/no-show for three days ending on January 21, 2009 and was considered to have voluntarily quit his employment. The claimant testified that he quit because he was disrespected and he gave as an example that the employer essentially ignored him when the claimant repeatedly asked about getting a raise. The employer had never heard this explanation prior to the hearing and questioned why the claimant only brought it up a year after the fact and why he had not complained or spoken about it to the human resources department before he quit.

REASONING AND CONCLUSIONS OF LAW:

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

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. 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 failing to call or report to work for three days.

871 IAC 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.

The claimant was deemed a voluntary quit on January 21, 2009 after three days of no-call/no-show. It is his burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. The claimant presented insufficient evidence to establish he quit with good cause attributable to the employer. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated January 15, 2010, 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