

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTICUS L JONES
Claimant

APPEAL NO. 08A-UI-08409-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMEGA CABINETS LTD
Employer

**OC: 08/24/08 R: 03
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Marticus L. Jones (claimant) appealed a representative's September 12, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Omega Cabinets, Ltd. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 6, 2008. The claimant participated in the hearing. Jodi Shaffer 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:

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on November 13, 2006. He worked full time as a wood worker in the employer's cabinet manufacturing business. His regular work schedule was 6:00 a.m. to 2:30 p.m., Monday through Friday, plus overtime as needed. His last day of work was July 23, 2008.

The claimant had been given several warnings prior to July 23 with regard to properly swiping his timecard on time in when reporting to work; he understood that should he have any further late swipes he was subject to discharge. On July 23 the claimant had to wait for the prior shift leaving in order to clock in, and so clocked in right at the last minute to avoid being late. He then was further detained and so missed the shifts warm-up exercises. His supervisor believed he was probably late clocking in, and so sent the claimant to Ms. Shaffer, the human resources representative, between 10:30 a.m. and 10:45 a.m. He told her what had happened and she told him that she would check into the matter further, that it might still be considered an incident, but that she would follow up and get back to him.

The claimant then returned to his line and visited with the line leader. The line leader indicated that in instances such as the claimant was in, the employee would “usually” be terminated. The claimant decided he would not wait to be discharged, and so left the facility at approximately 11:00 a.m. His supervisor discovered he was gone later on during the shift, and the claimant was clocked out of the system at 12:45 p.m. The employer had not made a decision to discharge the claimant.

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 he was going to be discharged by the employer 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 where an employee leaves rather than returning to assigned work that was available to them, where he was not told he was in fact discharged. 871 IAC 24.25.

The claimant did not establish that for a certainty he would have been discharged, and left the facility before waiting for Ms. Shaffer to get back with him on what if any action would occur; 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.

DECISION:

The representative’s September 12, 2008 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 23,

2008, 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/css