

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID W MURRELL
Claimant

APPEAL NO. 11A-UI-09848-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 06/12/11
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 20, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 18, 2011. Claimant David Murrell provided a telephone number for the hearing, but was not available at that number at the time set for the hearing. Katie Hurt, executive team lead for human resources, represented the employer. Exhibits One through Five were received into evidence.

The hearing was set for 1:00 p.m. on August 18, 2011. Mr. Murrell provided a telephone number for the hearing on August 1, 2011. On that day, Mr. Murrell requested to reschedule the hearing because he had plans to travel out of state. The administrative law judge indicating a willingness to move the hearing, but advised Mr. Murrell that the hearing would be moved up to August 10 at 8:00 a.m. Mr. Murrell then withdrew his request for a postponement and indicated that he would participate on August 18 at 1:00 p.m. The administrative law judge made three attempts to reach the claimant at the time set for the hearing, but the telephone number was inoperable. The hearing record closed at 1:20 p.m. without participation from the claimant. As of the entry of this decision at 3:15 p.m. on August 18, there has still been no contact from the claimant to signal his availability for a hearing.

ISSUE:

Whether Mr. Murrell separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: David Murrell was employed by Target in Cedar Rapids as a full-time Team Lead in Hard Lines from September 2010 until April 12, 2011, when he ceased appearing for work or making contact with the employer. After Mr. Murrell worked on April 12, he was absent without notifying the employer for consecutive shifts on April 14, 15, 18, 19, 21, and 22 before the employer concluded that he had voluntarily quit under the employer's no-call, no-show policy. Mr. Murrell made no further contact with the employer after he worked on April 12.

The employer had a written attendance policy that was provided to Mr. Murrell at the start of the employment. The policy required that Mr. Murrell provide the employer with prior notice if he needed to be absent from a shift. The policy also indicated that the employer would consider him to have voluntarily quit if he was absent for three shifts without notifying the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When a worker is absent for three shifts without notifying the employer in violation of the employer's policy, the worker is deemed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4).

The evidence in the record indicates that Mr. Murrell voluntarily quit for personal reasons effective April 12, 2011. Mr. Murrell further indicated his intention to voluntarily separate from the employment by being absent from six consecutive shifts without notifying the employer in violation of the employer's attendance policy. Mr. Murrell voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Murrell is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Murrell.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an

overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's July 20, 2011, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw