

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

IRVING L SALLIE
452 –14½ AVE
ROCK ISLAND IL 61201

SIVYER STEEL CORP
225 S 33RD ST
BETTENDORF IA 52722 6403

Appeal Number: 05A-UI-01374-H2T
OC: 01-09-05 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 1, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 24, 2005. The claimant did participate along with his witness, Peggy Pemberton. The employer did participate through Vickie Stark, Human Resources Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a job floor molder trainee full time beginning December 15, 2003 through December 23, 2004 when he voluntarily quit. The claimant was a no-call/no-show to work for three days beginning on December 20, 21, and 22, 2004. The claimant went into the

personnel office on December 17, 2004 at approximately 3:00 p.m. and told Ms. Stark that he had been drinking since the previous night and that he was still intoxicated. Ms. Stark spoke to the claimant and told him that he was not in any condition to continue working. The claimant was sent home and instructed to call Ms. Stark on Monday morning. At no time did the claimant tell Ms. Stark that he would not be in to work on Monday, December 20, because he had to attend alcohol treatment. The claimant's own testimony at the hearing was that he did not enter alcohol treatment until December 31, 2004. The claimant used the time from December 17, 2004 until he contacted the employer again on January 5, 2005 for vacation to visit relatives over the holidays. The claimant had no vacation time due him during the period between December 20 and January 5. The claimant did not request sick leave prior to December 20, 2004.

On January 5, 2005 the claimant called Ms. Stark and left her a voice message indicating that he had been released to return to work and asking when he could return to work. Ms. Stark returned the claimant's call to his home on January 5, after receiving his message. Ms. Stark told the woman who answered the phone that the claimant had been discharged for being a three-day no-call/no-show to work in late December. The claimant had previously properly reported his absence to the employer illustrating that he did know the policy and how to comply with it. The claimant was given a copy of the employer's attendance policy when he began his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

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.

Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. The claimant's argument that Ms. Stark called his home on December 20 and told his girlfriend that he was discharged is not

credible in light of the claimant's admission that he called Ms. Stark on January 5, 2005 asking when he should return to work. Had the claimant in fact been told on December 20, 2004 that he was discharged, then there would have been no reason for him to call Ms. Stark on January 5, 2005. Ms. Stark has credibly testified that she called the claimant on January 5, 2005 and not on December 20, 2004 to tell him that he had been discharged for being a three-day no-call/no-show to work in late December 2004. The administrative law judge concludes that the testimony of Ms. Stark is more credible. The claimant was a three-day no call-no show to work in violation of the employer's policy. Benefits are denied.

DECISION:

The February 1, 2005, reference 01, decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/s