

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH MAKWER
Claimant

APPEAL NO: 12A-UI-05058-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PACIFIC PROCESSORS INC
Employer

OC: 05/15/11
Claimant: Respondent (2)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.25(4) - Voluntary Quit Without Good Cause
Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Iowa Pacific Processors, Inc. (employer) appealed an unemployment insurance decision dated April 30, 2012, reference 07, which held that Joseph Makwer (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 26, 2012. The claimant participated in the hearing. Bader Mossa interpreted on behalf of the claimant. The employer participated through Todd Smith, Controller. 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 production worker from February 6, 2012 through March 30, 2012. 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's last day of work was March 19, 2012. He called in his absence due to illness on March 20, 2012 and subsequently provided a medical excuse taking him off work through March 21, 2012. The claimant was released to return to work on March 22, 2012 but was a no-call/no-show that day and the next six workdays. The employer considered the claimant to have voluntarily quit when it did not hear from him by March 30, 2012.

The claimant testified that he went to the work site on March 22, 2012 to report he could not work. He testified he then called his supervisor on March 23, 2012 and his supervisor told him he was discharged for failing to call or report to work on March 22, 2012.

The claimant filed a claim for unemployment insurance benefits effective May 15, 2011 but has not received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify his 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 § 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 after March 21, 2012.

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 § 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 § 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 March 30, 2012 after seven days of no-call/no-show. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. His contention that he was fired by his supervisor for one no-call/no-show is without merit. The claimant failed to establish that he quit with good cause attributable to the employer.

In the alternative, the separation could also be characterized as a discharge, in which case, the employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant's seven days of no-call/no-show shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has also been established. Benefits are denied.

DECISION:

The unemployment insurance decision dated April 30, 2012, reference 07, is reversed. 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. There is no overpayment as a result of this decision.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css