

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAUN CRABLE**  
Claimant

**APPEAL NO. 07A-UI-06493-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENEFEE DRYWALL CO INC**  
Employer

**OC: 06/03/07 R: 03  
Claimant: Appellant (1)**

871 IAC 24.32 (9) – Suspension/Disciplinary Layoff  
Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Shaun Crable (claimant) appealed an unemployment insurance decision dated June 21, 2007, reference 02, which held that he was not eligible for unemployment insurance benefits because he was placed on disciplinary suspension by Menefee Drywall Company, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 17, 2007. The claimant participated in the hearing. The employer participated through Cindy Weaver, Administrative Assistant. Employer's Exhibits One through Four 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 employer discharged the claimant for work-related misconduct?

**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 drywall finisher from July 25, 2006 through June 13, 2007. He had received previous verbal warnings for attendance but received a written warning on March 16, 2007 after he was a no-call/no-show on March 8 and March 15. The claimant was advised in that warning that any further incidents would result in a suspension without pay or possible termination. After his written warning, he had eight unexcused absences which included two no-call/no-shows. The last no-call/no-show was on June 1, 2007 and resulted in a one week unpaid suspension. The claimant was advised of that suspension on June 4, 2007 when he arrived for work. He was scheduled to return to work on June 11 but was another no-call/no-show for three consecutive days. The employer's policy provides that employees are considered to have voluntarily quit after three days of no-call/no-shows. The claimant was considered to have quit his employment effective June 13, 2007.

The claimant admits he was a no-call/no-show on June 1 but contends when he reported to work on June 4, he was simply told to go home as there was no work for him. He filed his unemployment insurance claim that week and said he believed the employer would call him when work was available. The claimant said he tried to contact the employer by phone twice and used the cell phone walkie-talkie a couple of times also, but claims he was unable to reach anyone. He just assumed he was laid off.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be determined in this matter is whether the claimant's disciplinary suspension was for any disqualifying reason. He was suspended for the week of June 4, 2007 due to excessive unexcused absenteeism. Where an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code § 96.5-2-a.

In order for a suspension to be a disqualifying event, the evidence must establish that the suspension was for misconduct in connection with the individual's employment. See 871 IAC 24.32(9). Misconduct is defined as deliberate actions contrary to the employer's interest. See 871 IAC 24.32(1). The evidence in this case does demonstrate the claimant's excessive unexcused absenteeism is considered misconduct and is disqualifying. Therefore, the claimant is not qualified to receive unemployment insurance benefits for the one week period ending June 9, 2007.

The next issue to be addressed is whether the claimant's final separation was also disqualifying. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1. 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 when he failed to call or report to work for three consecutive days ending June 13, 2007. The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without giving notice to the employer in violation of company rule. 871 IAC 24.25(4).

It should be noted that the claimant disagrees with some of the employer's facts and claims he was never suspended but was sent home on June 4, 2007 because there was no work. He thought the employer would call him when there was more work and claims he tried unsuccessfully to contact the employer. When he was not called back to work, he just assumed he was laid off. The claimant's version of events would also be classified as a voluntary quit without good cause attributable to the employer. It is doubtful that he would not have been able to reach the employer had he wanted to do so and his failure to return to work simply demonstrates the intent to quit. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984). Although this case is not on point, it does demonstrate the basic premise.

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. The claimant has not satisfied that burden. Benefits are denied.

**DECISION:**

The unemployment insurance decision dated June 21, 2007, reference 02, 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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