

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN S SCHLEICHER
Claimant

APPEAL NO. 09A-UI-10433-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 06/07/09
Claimant: Respondent (4-R)

Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 13, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 7, 2009. Claimant Steven Schleicher did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Garrett Piklapp, General Counsel, represented the employer and presented testimony through William Abbott, Assistant Meat Market Manager. Exhibits One, Two and Three were received into evidence.

ISSUE:

Whether the claimant separated from the employment for reasons that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Steven Schleicher was employed by Fareway Stores in Grimes as a part-time meat cutter. The employment began in September 2008. Mr. Schleicher last performed work for the employer on December 28, 2008. Terry Singer, Meat Department Manager, and William Abbott, Assistant Meat Department Manager, were Mr. Schleicher's supervisors.

On December 31, 2008, Mr. Schleicher notified Mr. Abbott that he needed to travel to Iowa City. Mr. Abbott does not remember why Mr. Schleicher needed to travel to Iowa City. Mr. Abbott told Mr. Schleicher to be certain to call that evening or the next day to notify the employer when he would be returning to work. The employer then did not hear from Mr. Schleicher until January 18, 2009, when Mr. Schleicher met with Mr. Singer to find out why he was not on the work schedule.

Mr. Schleicher had been scheduled to work on January 2, 3, and 5, but had failed to appear for those shifts or notify the employer that he would be absent from those shifts. The employer had a written policy in its employee handbook that deemed three consecutive no-call, no-show absences a voluntary resignation. On January 6, 2009, Mr. Singer and Mr. Abbott concluded

the employment was terminated by means of the no-call, no-show absences on January 2, 3 and 5.

REASONING AND CONCLUSIONS OF LAW:

The claimant failed to participate in the hearing and, thereby, failed to contribute to the evidence upon which the administrative law judge's decision must be based.

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

Where an employee's separation from employment is based on the employee being absent three days without giving notice to the employer in violation of a company rule, the employee is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4).

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.

The evidence in the record indicates that Mr. Schleicher voluntarily quit the employment without good cause attributable to the employer by being absent for three consecutive shifts without notifying the employer in violation of an established work rule. Accordingly, Mr. Schleicher is disqualified for benefits based on base period wage credits earned from the Fareway employment 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. Schleicher. Mr. Schleicher is eligible for benefits based on other base period employment, provided he meets all other eligibility requirements.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

This matter will be remanded to the Claims Division for determination of Mr. Schleicher's eligibility for reduced benefits based on wage credits he earned through base period employment other than Fareway.

The outcome in this matter would have been similar, but worse for Mr. Schleicher, had the administrative law judge concluded the separation was based on a discharge rather than a voluntary quit. The evidence in the record is sufficient to establish three consecutive unexcused

absences. Thus the evidence would establish excessive unexcused absences and misconduct in connection with the employment that would entirely disqualify Mr. Schleicher for benefits until he had earned 10 times his weekly benefit amount through insured work. See Iowa Code section 96.5(2)(a); see also 871 IAC 24.32(1)(a) and (8).

DECISION:

The Agency representative's July 13, 2009, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits based on base period wage credits earned through the Fareway employment 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. The claimant is eligible for benefits based on *other* base period employment, provided he meets all other eligibility requirements.

This matter is remanded to the Claims Division for determination of the claimant's eligibility for reduced benefits based on wage credits he earned through base period employment other than Fareway. The redetermination may result in a decision that the claimant has been overpaid unemployment insurance benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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