

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TIMOTHY B GALLAUGHER
Claimant

STELLAR HOLDINGS INC
Employer

APPEAL 15A-UI-03736-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/15/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 17, 2015 (reference 03) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2015. The claimant participated. The employer participated through Rhonda Krause.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a welder and was separated from employment on February 6, 2015.

The claimant incurred a personal injury, unrelated to the workplace in late 2014. The claimant provided the employer a series of doctor's notes as a result of the pain in his back. The claimant last performed work on January 15, 2015. The claimant then called out of work January 16, 19, 20, 21. He was a no-call/no-show on January 22 and January 23. He was advised by Ms. Krause that he was expected to call in daily if he was not going to be in to work. Ms. Krause also left him a voicemail stating he needed a doctor's release from work since he was unable to perform the job completely. The claimant called out each day January 26 through 30. He did not obtain a doctor's note to release him to work. He called in one day to his manager who called him a derogatory name. He decided he was not coming back to work and then was a no-call/no-show the following week and did not report the name calling to human resources. The employer's policy, which the claimant received upon hire, provides that three days of no-call/no-shows will be considered a voluntary resignation due to job abandonment. The claimant never tried to return to work or furnish the requested doctor's note.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The claimant sustained a personal injury that prevented him from doing his job. The employer allowed him to remain off work until he had a doctor's note releasing him. The claimant did not obtain a doctor's note and did not call in per policy. The employer's expectation that the claimant provide a doctor's note after missing so much work and being unable to perform his job functions was reasonable under the circumstances. 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. Benefits are withheld.

DECISION:

The March 17, 2015 (reference 03) unemployment insurance decision is affirmed. The claimant voluntarily left the 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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