

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF A KENDALL
Claimant

APPEAL NO. 10A-UI-01882-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**Original Claim: 01//10/09
Claimant: Respondent (4-R)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, UPS, filed an appeal from a decision dated January 26, 2010, reference 01. The decision allowed benefits to the claimant, Jeff Kendall. After due notice was issued, a hearing was held by telephone conference call on March 16, 2010. The claimant participated on his own behalf and with a witness, Denise Barnet. The employer participated by Sort Manager Dan Kelly and Occupational Health Supervisor Tara Villema. Human Resources Representative Laura McFaden observed the proceedings but did not offer testimony.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Jeff Kendall was employed by UPS from September 6, 2007 until March 3, 2010, as a part-time loader. He worked an average of 18 hours per week.

The claimant was injured on the job November 19, 2009. The final doctor's statement the employer received released Mr. Kendall to return to work on December 21, 2009. He did not return to work until January 5, 2010, at which time Sort Manager Dan Kelly told him he was considered a voluntary quit for being no-call/no-show to work for three days.

A grievance was filed and a hearing held on January 27, 2010. The claimant maintained his doctor had changed the return to work date to January 4, 2010, so he would not have to work during the holiday shipping rush. The ruling was that he was to provide the employer with the statement from his doctor confirming this. The document was supplied to Occupational Health Supervisor Tara Villema on January 29, 2010.

The claimant tried calling Mr. Kelly or his supervisor, Dan Tucker, several times after January 29, 2010. He believed he was to wait to hear from the employer after he submitted the doctor's statement as to when UPS wanted him to return to work. Finally on February 24, 2010, the claimant and Mr. Kelly spoke while Mr. Kendall was driving to Rochester, Minnesota, to visit

his father, who was in the Mayo Clinic. Mr. Kelly told him he still had a job and needed to report to work at 4:00 p.m. that day. The claimant explained he was out of town and could not do that.

He returned to Iowa late that evening and contacted a union representative. It was recommended he have the physician write a statement saying he had been visiting his father on February 24, 2010, and could not start work as requested. Mr. Kendall maintained no medical staff at all had been in the room while he was visiting and he did not explain this to the union representative. He made no effort to contact someone at the hospital to verify his presence nor did he ask the union for any other instructions.

Mr. Kendall did not return to work and was sent a letter from the employer on March 3, 2010, notifying him he was considered a voluntary quit for being no-call/no-show to work for three days from February 24, 2010, when his supervisor had told him to report to work.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had good reason to know continuing work was available to him effective February 24, 2010, because his supervisor told him to return to work that day. The claimant showed questionable judgment in talking with his supervisor while he was on his way out of state, because that put him in a position to refuse to return to work that day.

Nonetheless, he could have shown up the next day with a statement from the hospital that he was visiting there or contacted the union for further instructions. He could have arrived at work with a union representative to negotiate his return to work. He did not file another grievance after receiving notice he was considered a voluntary quit. The administrative law judge considers the claimant to have quit as of February 25, 2009 without good cause attributable to the employer by abandoning his job.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of January 26, 2010, reference 01, is modified in favor of the appellant. Jeff Kendall is disqualified and benefits are withheld effective the week ending February 27, 2010. He is disqualified until he has requalified by earning ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw