

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP S KELLY

Claimant

APPEAL NO. 06A-UI-09499-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESSIBLE MEDICAL STAFFING

Employer

**OC: 08/13/06 R: 02
Claimant: Appellant (5)**

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Phillip Kelly (claimant) appealed a representative's September 18, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Accessible Medical Staffing (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held on November 7, 2006, in Des Moines, Iowa. The claimant was represented by Robert Wright, Jr., and participated personally. The employer participated by Mindy Pedersen, Administrator, and Karey Sego, Lead Staffing Coordinator.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on December 30, 2005, as a full-time certified nurse aid. The claimant was to provide the employer with his availability on Monday of each week and the employer would assign the claimant to various institutions. The claimant's assignments were limited by his requests not to be assigned to certain institutions and certain other institutions asked that the claimant not be assigned to work for them. The claimant had a history of intimidating his employer through the tone and volume of his voice. He frequently argued with his employer. The employer was too fearful to issue the claimant a warning.

On or about August 13, 2006, the claimant found out that a relative he was very close to had died and been buried two-weeks previously. When the claimant reported his availability on August 13, 2006, the employer and claimant talked about his assigned placement on August 16, 2006. He told the employer he was distraught about the death and then asked the employer for money for fuel to go to the assignment. The employer denied the claimant's request. The claimant wanted to know if he would be paid on August 18, 2006. The employer told the claimant he would be paid as always. The employer understood that the claimant agreed to go

to the placement. The claimant thought he told the employer he could not go without getting gas money from the employer.

On August 16, 2006, the claimant did not appear for his assigned shift at 6:00 a.m. The employer attempted to reach the claimant. The claimant telephoned the employer at approximately 8:36 a.m. After a few minutes of discourse the claimant yelled at the employer, "You are nothing but a bunch of stupid racial mother fuckers." The claimant disconnected. He assumed he had quit work when he said swore at the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

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). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He swore at the employer and disconnected a telephone conversation with them with the intent of quitting. There was no evidence provided by the claimant of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's September 18, 2006 decision (reference 01) is modified with no effect. 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw