

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEDD B JULIUS
Claimant

APPEAL NO. 11A-UI-14068-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LYNCH LIVESTOCK INC
Employer

**OC: 10/02/11
Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 21, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 17, 2011. Claimant participated. Employer participated by Bryan Marco, manager—Sibley buying station, and Kerry Able, human resources director. The record consists of the testimony of Kerry Able; the testimony of Bryan Marco; and the testimony of Jedd Julius.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact.

The employer hauls, sells and markets livestock. The claimant was hired on December 30, 2008, as a part-time yard man. He went to full-time status on June 1, 2009. His last day of work was July 29, 2011. His employment ended on August 11, 2011.

The employer has a written policy, of which the claimant was aware, that three consecutive days of no call/no show is considered a voluntary quit. The claimant was a no call/no show on August 8, 2011; August 9, 2011; and August 10, 2011.

The last communication from the claimant came via a text message on August 1, 2011, to Bryan Marco. The claimant told Mr. Marco that he would not be at work. He had to go to court and see a doctor about his personal illness. The employer excused the claimant from work through August 5, 2011. When the claimant did not show up for work on August 8, 2011, the employer made several calls to the claimant. None of the calls were returned by the claimant.

REASONING AND CONCLUSIONS OF LAW:

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.

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 § 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 § 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.

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.

The evidence in this case showed that the claimant was a no call/no show for three consecutive work days on August 8, 2011; August 9, 2011; and August 10, 2011. The claimant had been excused from attending work the previous week based on a text message from the claimant that he had to go to court and see the doctor. This text message was sent by the claimant on August 1, 2011. Thereafter the claimant made no effort to contact his employer. The employer expected the claimant to come to work on August 8, 2011. The employer tried to call the claimant and got no response. The claimant had no explanation on why he failed to contact the employer either before or after his job ended. The claimant did say that he had personal illness and that he thought his employer would understand. He read a doctor's excuse but could not say when or if that doctor's excuse was sent to the employer.

An employee has some obligation to keep in touch with his employer. In this case, the claimant chose not to speak directly with the employer, but send a text message on August 1, 2011, and thereafter do nothing. A text message is a limited way of providing information, particularly when it concerns one's job. The employer could reasonably believe that the claimant

abandoned his job. The claimant did not show up for work and did not call his employer. Three instances of no call/no show on consecutive work days is considered a voluntary quit without good cause attributable to the employer. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code § 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 overpayment issue is remanded to the claims section for determination.

DECISION:

The decision of the representative dated October 21, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs