

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOWARD MURDOCK JR
Claimant

APPEAL NO: 10A-UI-13903-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 08-22-10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 27, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 17, 2010. The claimant participated in the hearing. Matt Timmerman, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general laborer for Express Services last assigned to Miracle Logistics from December 15, 2008 to August 8, 2010. The claimant was experiencing problems with his teeth. He told a co-worker to tell the employer he had to have four teeth pulled after going to the dentist August 6, 2010. He did not have oral surgery until August 18, 2010 and did not have a note excusing him from work for that time period. After that he returned to the employer and it told him it needed a release from his dentist allowing him to return to work. The claimant believed the University of Iowa Dental College faxed the employer a release but never saw it and does not know definitively. The employer does not have a copy of a fax from the Dental College in its file. The claimant did not hear from the employer again.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment 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.

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.

While the claimant did have oral surgery August 18, 2010, he was off work beginning August 6, 2010, without a doctor's note excusing him from work. If he had worked until the time of his dental surgery and then returned with a release to return to work and the employer did not provide any work for him, he would likely have been eligible for unemployment insurance benefits. Because he was absent from August 6 to August 18, 2010, without talking to the employer personally or providing a doctor's excuse to the employer for that absence, however, the administrative law judge must conclude the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, and is considered to have voluntarily left his employment without good cause attributable to the employer. Therefore, benefits must be denied.

DECISION:

The September 27, 2010, reference 01, decision is affirmed. The claimant voluntarily left his 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs