

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW M BURROUGHS
Claimant

APPEAL NO. 08A-UI-05400-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RATHJE CONSTRUCTION CO
Employer

OC: 05-04-08 R: 03
Claimant: Respondent (4)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.27 – Voluntary Leaving Part Time Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 30, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 23, 2008. The claimant did participate. The employer did participate through Mary Rathje, Office Manager, and Robert Rathje, President.

ISSUE:

Was the claimant discharged for work-related misconduct or did he voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a custodian or a janitor, part-time, beginning August 20, 2007, through April 25, 2008, when he voluntarily quit. The claimant left work early on April 25 without permission. He was to work until 5:00 p.m. but left early to go help a friend with a computer. When Mr. Rathje learned that the claimant had left, he called the claimant and instructed him to come back into work. The claimant did not do so. The claimant came in and worked on the following Sunday when no other employees or the employer was present. The claimant returned to work on Monday and without speaking to anyone, dropped off his keys, and left the workplace. No one on behalf of management ever told the claimant he was discharged.

The administrative record shows that the claimant has not requalified for benefits but is otherwise monetarily eligible.

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 and has not requalified but is otherwise monetarily eligible.

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 Code § 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Inasmuch as the claimant was never told he was discharged but stopped showing up for work, the claimant is deemed to have quit work. The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6-2 (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment but were not told so by the employer and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. However, the claimant has not requalified for benefits since the separation and is otherwise monetarily eligible according to base period wages. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The May 30, 2008, reference 01, decision is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but is otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. The account of this employer shall not be charged.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw