

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES J GATES
Claimant

APPEAL NO. 11A-UI-11734-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINZE MFG CO
Employer

OC: 07/31/11
Claimant: Appellant (5)

Section 96.5(1) - Quit

STATEMENT OF THE CASE:

The claimant, Charles Gates, filed an appeal from a decision dated August 25, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 28, 2011. The claimant participated on his own behalf. The employer, Kinze, participated by Human Resources Manager Helena Long and Supervisor Dan Deluhrey,

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Charles Gates was employed by Kinze from January 31, 1997 until July 25, 2011 as a full-time employee. He had been in the prototype development area and his work was satisfactory, but his attendance was not. For some time he had been in the habit of getting his attendance points up to five but then regaining some of the points before he got to the discharge level of six points. He had been counseled about this by his supervisors because his presence on the team was important and his absences created many problems.

On July 21, 2011, Supervisor Dan Deluhrey and Human Resources Manager Wayne Perret gave the claimant an evaluation which was unsatisfactory. He was told he was being transferred to the fabrication department effective Monday, July 25, 2011, because of his continued failure to improve his attendance had had a negative impact on the prototype development area.

Mr. Gates would be working the same hours and at the same rate of pay. The job duties would be somewhat different. He was told he had the choice to accept the change in assignment or to quit and he said he wanted the weekend to think about it. On Monday, July 25, 2011, he contacted Mr. Perret around 8:00 a.m., two and one-half hours after the scheduled start of his shift. He refused to come in to work because he wanted to talk to the COO, Brian, first. Mr. Perret told him he was required to come in to work and then a meeting would be scheduled

with the COO who was willing to meet with him. The claimant refused several times over the course of three phone calls and finally the employer notified him his employment was ended.

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(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The claimant refused to continue working. He maintained at the appeal hearing he did not come in to work on July 25, 2011, because he was ill. But Mr. Deluhrey, who was present during the phone call, stated no mention of illness was made, only that Mr. Gates refused to come in to work. Even if he was ill he did not call to report his absence until two and one-half hours after the start of the shift. His assertion he had a migraine headache is unconvincing because he did acknowledge he had medication to take but did not take it that day.

The claimant was transferred to another area because his attendance had been unsatisfactory and a detriment to the employer. When an employer demotes an employee for misconduct warranting discharge, an employee who subsequently leaves employment does so without good cause attributable to the employer, and is disqualified from receiving unemployment benefits. *Goodwin v. BPS Guard Services, Inc.*, 524 N.W.2d 28 (Minn. App. 1994).

The record establishes the employer was willing to arrange a meeting between Mr. Gates and the COO but he would have to report to work first. The claimant's refusal to cooperate with the employer to resolve his concerns is a refusal to continue working and a voluntary quit without good cause attributable to the employer. The claimant is disqualified.

DECISION:

The representative's decision of August 25, 2011, reference 01, is modified without effect. Charles Gates voluntarily quit without good cause. He is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs