

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID M PFEILR
Claimant

APPEAL NO. 08A-UI-00334-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APEL INC
Employer

OC: 11/25/07 R: 04
Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, David Pfeilr, filed an appeal from a decision dated January 7, 2008, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on January 28, 2008. The claimant participated on his own behalf. The employer, Apel, Inc., participated by Co-Owner Marlene Apel.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

David Pfeilr was employed by Apel, Inc., from June 27 until December 6, 2007, as a full-time laborer. On November 30, 2007, he requested to take December 5 and 6, 2007, off as vacation. Co-Owner Marlene Apel informed him on December 3, 2007, that request was denied, though his other request for December 13 and 14, 2007, was granted. The first request was denied as a major snow storm was predicted and he would be needed to help clear snow.

On December 4, 2007, the claimant left for Madison, Wisconsin, and en route was informed by the foreman, Donny, by his cell phone, he should report to work at 3:00 a.m. the next morning to start clearing snow. Mr. Pfeilr became stranded in Wisconsin, a combination of the blizzard and transportation problems. He called and left a message for Donny saying he would “try to make it in” but was not sure. After that he did not call back to say he definitely would not be back in time to go to work.

When he returned around 6:00 a.m. the next day he did not call anyone at Apel, Inc., to say he had returned and was able and willing to report for work. He “assumed” the employer would somehow know he had returned and call him for snow removal later that day. When he was not called for snow removal duty he again “assumed” he was fired and never contacted the employer.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was a no-call/no-show to work for snow removal in the early hours of December 5, 2007. Although he said he would try to make it back, he never called again to affirm he would have to be replaced for the entire shift. After that he made no effort whatsoever to call either the office or the supervisor and advise them he was back and willing to return to work. It was not reasonable that he would assume the employer would somehow know he had returned, and his second assumption he was fired or laid off is not reasonable. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer LaGrange v. IDJS, (Unpublished, Iowa App. 1984).

DECISION:

The representative's decision of January 7, 2008, reference 03, is affirmed. David Pfeilr 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