

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES L FOX
Claimant

APPEAL NO. 11A-UI-04211-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 08/22/10
Claimant: Respondent (4)

Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit from Part-Time Employment

STATEMENT OF THE CASE:

James Fox filed a timely appeal from the March 29, 2011, reference 03, decision that denied benefits. After due notice was issued, an in-person hearing was held on May 10, 2011. Mr. Fox participated. Blair Winkler, executive team leader for human resources, represented the employer. Exhibits One, Two, and Three were received into evidence. The administrative law judge took official notice of the Agency's administrative record (DBRO) concerning the claimant's base period employers.

ISSUE:

Whether Mr. Fox separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Fox was employed by Target Corporation as a part-time, seasonal team member from November 16, 2010 and last performed work for the employer on December 12, 2010. On December 12, 2010, Mr. Fox left work early due to his wife's illness. Mr. Fox's wife is seriously ill and is in a nursing home. Mr. Fox's wife has suffered multiple strokes. Mr. Fox has repeatedly been in a situation where a health care provider has advised him that his spouse was about to pass away. When Mr. Fox left work early on December 12, he had been informed that his spouse had taken a turn for the worse. Mr. Fox appropriately notified a supervisor on duty, Christian, of his need to leave. Mr. Fox told the supervisor that he expected he would need to be away for up to three days. The supervisor told Mr. Fox that he understood and that Mr. Fox needed to take care of his family.

Mr. Fox was next scheduled to work on December 14, 2010. Mr. Fox had moved into his wife's room at the nursing home and was focused on his wife's condition. Though Mr. Fox did not contact the employer on December 14, the employer coded that absence as an absence with proper notice. Mr. Fox was then absence for shifts on December 15, 16, and 21, 2010 for the same reason and without making contact with the employer on those days. On December 22,

2010, the employer documented Mr. Fox's separation from the employment as a voluntary quit. Mr. Fox's spouse's condition had begun to improve. Mr. Fox made contact with the workplace, spoke to the store operator, and learned he had been taken off that day's schedule. Mr. Fox did not request to speak with a supervisor and did not make further contact with the employer regarding his work status. Instead, Mr. Fox concluded that employer had discharged him from the employment. The employer had made no contact with Mr. Fox to indicate he was discharged.

The employer has a written attendance policy that was provided to and reviewed with Mr. Fox at the start of his employment. The attendance policy required that Mr. Fox notify the employer at least two hours prior to the scheduled start of his shift if he needed to be absent. The policy required that Mr. Fox make such contact with the employer each day he was absent unless he had been approved for a leave of absence. The policy indicated that three days of absence without notifying the employer would be deemed a voluntary quit. Mr. Fox had signed his acknowledgment of the policy.

Target Corporation is not a base period employer for purposes of the claim year Mr. Fox started in August 2010 or the additional claim for benefits he filed in January 2011.

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.

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.

When a worker is absent from work three days without notifying the employer in violation of the employer's policy, the worker is presumed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4).

The weight of the evidence in the record establishes a voluntary quit from part-time employment. The employer reasonably concluded, after Mr. Fox had been gone multiple days, and after he failed to make meaningful contact with the employer about returning to work, that he had voluntarily separated from the employment. Mr. Fox unreasonably concluded he had been discharged from the employment. Because Mr. Fox voluntarily quit the part-time employment without good cause attributable to the employer, Mr. Fox would be disqualified for benefits based on wages earned through the Target employment until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount after separating from the employment, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Fox.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit

amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits, may receive reduced benefits based on the other base period wages. See 871 IAC 24.27. Despite the voluntary quit, Mr. Fox remains eligible for benefits, provided he meets all other eligibility requirements. Because Target is not a base period employer for purposes of the current claim year, there would be no reduction in benefits during the current claim year associated with the separation from Target.

DECISION:

The Agency representative's March 29, 2011, reference 03, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits based on the Target employment until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. Mr. Fox remains otherwise eligible for benefits, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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