

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGUEL R HOLLOWAY
Claimant

APPEAL NO. 09A-UI-06090-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET MFG INC
Employer

OC: 12/21/08
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Anguel R. Holloway, filed an appeal from a decision of a representative dated April 15, 2009, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 14, 2009. The employer participated by Mitzi Tann, Human Resources Manager, and Dave Slaikeu, Department Leader. The claimant failed to respond to the hearing notice and did not participate. The claimant did call in after the hearing was completed. The record consists of the testimony of Mitzi Tann; the testimony of Dave Slaikeu; and Employer's Exhibit One, consisting of five pages.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired on September 5, 2007, as a component machining and assembly apprentice. On Sunday, March 8, 2009, the claimant reported for work on time and worked the entire shift. The next day, March 9, 2009, the claimant did not show up for work and did not notify the employer. The employer had a written policy requiring a worker to call in prior to his or her shift and report any absence. The claimant knew about this policy as he had signed a written acknowledgement of receipt of the employer's handbook and had followed that policy in the past.

As a result of the claimant's failure to report his absence on March 9, 2009, a written warning was prepared. The employer intended to give this warning to the claimant. On March 10, 2009, the claimant reported for work. His shift started at 10:30 p.m. At 11:00 or 11:15 p.m., the claimant walked off the job. He did not report to his shift leader, Curt Dellinger, prior to leaving. The claimant never returned to work and never contacted the employer thereafter.

The employer sent a letter to the claimant on March 11, 2009, informing the claimant that he was considered to have quit his position as a result of his walking off the job on March 10, 2009. The claimant never responded to this letter.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

An issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

A claimant who voluntarily leaves employment without good cause attributable to the employer is disqualified from receiving unemployment benefits. Iowa Code section 96.5-1. The claimant has the burden of proof in cases involving quits. Iowa Code section 96.6-2. 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 608, 612 (Iowa 1980)

The first issue to be considered concerns the claimant's untimely phone call to participate in the hearing in this case. The claimant did not call in to provide a telephone number for the hearing prior to the hearing. The employer did comply with the notice and a telephone call was placed to the employer, whose representatives were available and did participate in the hearing. The opening statement was given; the witnesses sworn; and the employer's exhibit was received into evidence. Testimony was then taken from both of the employer's witnesses. The hearing started at 1:00 p.m. and concluded at 1:10 p.m. At 1:13 p.m., the claimant called in, asking to participate in the hearing. The administrative law judge was then connected with the claimant and spoke to him by phone. The telephone call was recorded. During that telephone conference, the claimant stated that he had received the notice of the hearing at his correct address and admitted that he had not called prior to or at the start of the hearing. His reason for calling late was that he was in a job interview.

The claimant has not established good cause to reopen the record. The claimant admitted that he had received the notice at his correct address. That notice clearly required the claimant to provide a telephone number at which he could be reached. He did not do so. He did not call in at the start of the hearing and failed to call prior to the conclusion of the hearing. His proffered excuse of being in a job interview does not establish the requisite legal excuse to reopen the hearing.

The evidence in this case established that the claimant voluntarily quit his job without good cause attributable to the employer. The claimant walked off the job on March 10, 2009, approximately 30 to 45 minutes after his shift began. He did not report to anyone prior to leaving. Thereafter he did not contact the employer to explain his actions, even after receiving a letter from the employer notifying him that he had been considered a quit. His actions evidence an intention to sever the employment relationship and overt action to carry out that intention. Benefits are denied.

DECISION:

The decision of the representative dated April 15, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs