

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW D TYLER
Claimant

APPEAL NO. 09A-UI-18776-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LERT
Employer

OC: 11-15-09
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 8, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 27, 2010. The claimant did participate. The employer did participate through Julie Sumner, Employee Services Assistant.

ISSUE:

Did the claimant 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 laborer full time beginning October 2, 2008 through March 31, 2009 when he voluntarily quit.

The claimant last worked on March 31, 2009. He called in sick that day and was unable to reach anyone in the office. He then called supervisor Nick Jensen's cell phone and left him a message that he was ill and unable to work. Later the claimant alleges that his friend Aaron Eads called him and told him he was fired for being a one day no-call/no-show to work. The employer's policy is that an employee is not discharged until they are a no-call/no-show for work for three consecutive shifts. Mr. Eads did not have the authority to discharge the claimant. After speaking with Mr. Eads the claimant did not contact his supervisor or anyone else in management at the employer's place of business to determine if he really was discharged. The employer did not process any paperwork on the claimant's discharge until over a week after he last worked as Mr. Jensen was waiting for the claimant to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). 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 was 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. The employer would not have discharged the claimant after only one day of a no-call/no-show incident. The administrative law judge is not persuaded that Mr. Jensen instructed Mr. Eads to call the claimant and tell him he was discharged. The claimant's failure to report to work after March 31 evidences his intent to quit his employment. Since claimant did not follow up with management personnel or the owner, and his assumption of having been fired was erroneous, claimant's failure to continue reporting to work was an abandonment of his job. Benefits are denied.

DECISION:

The December 8, 2009, reference 01, decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css