

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY A KEMP
Claimant

APPEAL NO. 10A-UI-09394-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HUSCO INTERNATIONAL INC
Employer

OC: 05/30/10
Claimant: Respondent (1-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Husco International (Husco), filed an appeal from a decision dated June 21, 2010, reference 01. The decision allowed benefits to the claimant, Jeremy Kemp. After due notice was issued, a hearing was held by telephone conference call on August 19, 2010. The claimant participated on his own behalf. The employer participated by Human Resources Administrative Assistant Betty Young.

ISSUE:

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

FINDINGS OF FACT:

Jeremy Kemp was employed by Husco from September 28, 2009 until May 25, 2010 as a full-time production worker on the 11:00 p.m.-to-7:00 a.m. shift. His last day of work was Friday, May 21, 2010, and he was no-call/no-show to work on May 23, and 24, 2010.

The company handbook requires employees to notify the “call-in line” if they are going to be absent. Failure to come to work or notify the call-in line for two days is considered a voluntary quit. Mr. Kemp did not use the call-in line but tried to contact his supervisor to say he would be absent. He was not able to reach his supervisor but still did not use the call-in line. He was notified by letter dated May 25, 2010, he was considered a voluntary quit for being no-call/no-show to work May 23 and 24, 2010.

The claimant appears to have returned to work but is still filing a claim for unemployment benefits. This issue of whether he is able and available for work should be remanded for determination.

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.

871 IAC 24.25(4) 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 section 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 section 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The employer's policy considers an employee to have voluntarily quit for being no-call/no-show to work for two days. However, the Iowa Administrative Code requires there to be three days of no-call/no-show to work before an employee may be considered a voluntary quit without good cause attributable to the employer and be disqualified for unemployment benefits.

While the employer may impose its own criteria of the number of days of no-call/no-show, Iowa Workforce Development is not bound by the employer's policy in such cases. Two days of no-call/no-show is not considered a voluntary quit without good cause attributable to the employer under the provisions of the above Administrative Code section. Disqualification may not be imposed.

DECISION:

The representative's decision of June 21, 2010, reference 01, is affirmed. Jeremy Kemp is qualified for benefits, provided he is otherwise eligible.

The issue of whether the claimant is currently working sufficient hours to remove him from the labor market is remanded to UIS division for determination of his eligibility for benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw