

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY R JUDKINS
Claimant

APPEAL NO. 08A-UI-08757-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEMEN TECH INC
Employer

**OC: 08/24/08 R: 02
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 16, 2008, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 15, 2008. Claimant participated. Employer participated by Deb Hauk, Human Resource Manager. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer. The second issue is whether the appeal is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on August 19, 2008. Claimant went off work due to illness. Claimant went to the Mayo Clinic for two days of tests. Claimant did not personally call in his absences. Claimant left a telephone number for his spouse to call. She did call, but did not leave a message that claimant was out sick. Claimant missed August 14, 2008; August 18, 2008 and also August 19, 2008 due to illness. Claimant's spouse called in on the second day, August 18, 2008, but did not leave a message. Claimant was aware of the policy that three no-call absences in a row constitute a voluntary quit. Claimant was aware of the procedure for calling in, as he had missed a fair amount of work earlier in the summer.

Claimant appealed the adverse decision on the same day he received the notice.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because of three no-call absences in a row. Missing three days in a

row without properly reporting the absences to employer is a quit without cause. Claimant violated a known company policy when he did not call in each day. Benefits withheld.

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.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to

both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant's appeal is timely, as the appeal was filed on the same day claimant received actual notice.

DECISION:

The decision of the representative dated September 16, 2008, 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. Claimant's appeal is timely.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw