

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH J CONKLIN

Claimant

APPEAL NO. 13A-UI-01892-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 11/18/12

Claimant: Appellant (5)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Keith Conklin (claimant) appealed a representative's February 8, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Whirlpool Corporation (employer) for excessive unexcused absenteeism. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 14, 2013. The claimant participated personally. The employer participated by Carrie Jaster, Human Resources Associate.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 26, 2010, as a full-time plant utility assembler. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during his employment.

The claimant suffered from a chronic illness and he was approved for intermittent Family Medical Leave (FMLA) on September 25, 2012. During the week of November 30, 2012, the claimant's illness flared up. The claimant took vacation, sick time or time off for his vehicle from December 1 through 9, 2012. The claimant took short-term disability from December 10, 2012, through January 2, 2013. His physician released him to return to work without restrictions on January 3, 2013.

On January 3, 2013, the claimant properly reported his absence due to illness. The employer told the claimant he had to have a doctor's note excusing him from work for that day by January 4, 2013, or he would be terminated. The claimant called his FMLA coordinator and was approved for FMLA for the day. He was unable to get an appointment to see his physician until later in the month. On January 4, 2013, the claimant properly reported his absence due to illness and got approval for FMLA. The claimant's supervisor told other workers that the claimant had been terminated and told the workers the nature of the claimant's illness.

The claimant assumed he was terminated on January 4, 2013. He did not report any further absences. He did not have a doctor's note that restricted him from working after January 2, 2013. On January 15, 2013, the employer assumed the claimant's employment had ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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's intention to voluntarily leave work was evidenced by his actions. He was absent from work for personal reasons for more than ten working days. When an employee is absent from work for more than ten working days for compelling personal reasons, his leaving is without good cause attributable to the employer. The claimant left work for more than ten working days for compelling personal reasons. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's February 8, 2013 decision (reference 01) is modified with no effect. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/tll