

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DERRELL TATE
Claimant

APPEAL NO: 15A-UI-09086-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 07/19/15
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 6, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 1, 2015. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Kara Ziskie, Talent Solution Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assembly worker for Kelly Services last assigned to KMS Kraft Foods from September 22, 2014 to November 7, 2014. The employer's policy states that more than two no-call/no-show absences will result in termination. The claimant received the policy at the time of hire.

The claimant was a no-call/no-show October 13 and October 21, 2014, and received a verbal warning following his October 21, 2014, absence. He was scheduled to work November 2, 2014, and was a no-call/no-show. His next scheduled shift was November 7, 2014, and he was a no-call/no-show for that absence as well. The employer attempted to call and email the claimant several times beginning November 2, 2014, but did not reach him and he did not respond to their efforts to contact him. When the claimant did not call or show up for work November 2 and his next scheduled shift November 7, 2014, the employer determined he voluntarily quit his job.

The claimant has claimed but not received unemployment insurance benefits since his separation from this employer because he was disqualified for benefits due to another issue.

The employer did not participate in the fact-finding interview held August 5, 2015, at 8:20 a.m.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(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 claimant failed to report for work or notify the employer four times during the six weeks he was assigned to this client. Two of those last four absences were consecutive shifts, November 2 and November 7, 2014, in violation of the employer's policy, and the claimant failed to respond to the employer's attempts to reach him by phone and email following his November 2, 2014, absence.

The claimant chose his own hours, shifts and schedules but failed to show up for the shifts he signed up for November 2 and November 7, 2014, and did not contact the employer despite its repeated attempts to contact him. The claimant's actions are considered a voluntarily leaving of his employment without good cause attributable to the employer. Therefore, benefits are denied.

DECISION:

The August 6, 2015, reference 01, decision is reversed. The claimant voluntarily left his 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. The claimant is not overpaid benefits as he claimed benefits but did not receive benefits due to being disqualified on another issue.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs