

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN K SCHNEIDER
Claimant

APPEAL NO. 12A-UI-02002-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELLER CONSTRUCTION CO INC
Employer

OC: 01/09/11
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 22, 2012, reference 04, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 15, 2012. Claimant participated with witnesses Jacob Bennett; Sheila Jackson; Jenene McLaughlin; and Tom Simmons. Employer participated by John Flynn, Attorney at Law with witnesses Shari Eller, Secretary Treasurer; Rick Eller, Vice President; and Kyle Eller, Co-Owner. Exhibits One and A were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 21, 2011. Claimant was on light duty. Claimant was required to call in every day. Claimant was off work for three days ending November 28, 2011. Claimant then called in each day through December 15, 2011. Claimant was let go for not calling in or coming to work for the three days ending November 30, 2011. Employer considers three no-call absences as a voluntary quit. Claimant did call and report his absences every day.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when employer terminated the employment relationship because of three alleged no-call absences. Claimant's version is found correct. Claimant did not miss three days in a row without calling in. This is not job abandonment. Claimant's version was backed up by two witnesses. The initial burden of proof in a quit case is on the claimant. Here claimant met his initial burden of proof. Employer had equally credible evidence. However, equal evidence does not prove a case by the preponderance of the evidence. Therefore, claimant prevails. Benefits allowed.

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.

DECISION:

The decision of the representative dated February 22, 2012, reference 04, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css