

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD W WADE
Claimant

APPEAL NO: 12A-UI-08005-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 06/03/12
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
871 IAC 24.22(2)j(2) – Failure to Return from Leave

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 28, 2012, reference 01, that held he voluntarily quit without good cause on May 29, 2012, and benefits are denied. A telephone hearing was held on July 31, 2012. The claimant participated. Kelly Vos, HR Generalist, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time laborer on November 17, 2001, and last worked for the employer on March 12, 2012. The claimant was granted 12-weeks of FMLA beginning March 29 due to surgery for a non-work-related foot issue. The employer informed claimant it approved a medical leave for a period from March 29 to May 28.

The employer sent claimant a certified letter on May 7 that his leave expired May 28, and he would need to have a doctor release on a form provided in order to return to work. He was warned that if the employer did not hear from him by May 31, he would be considered a voluntary quit. On May 24 HR representative Vos sent an e-mail to site manager Knowles about claimant's employment status.

When claimant failed to contact the employer by May 29 and return to work, Knowles and an assistant manager tried to contact claimant but were not successful. Vos tried to reach claimant and left a message for him. Although the employer extended his leave period during the period it did not hear from him, it terminated him as a failure to return to work and job abandonment/voluntary quit on June 7.

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 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes claimant voluntarily quit without good cause effective June 7, 2012 when he failed to return from a leave of absence.

The employer testimony was more credible based on its written communication with claimant about his negotiated FMLA, and attempts to learn why he was not returning to work. Claimant received a certified letter about the conditions for his return to work on May 29. The employer representative who testified in this hearing left a message for claimant on June 7 about his return to work after other attempts to contact claimant had resulted in no response. It is not plausible claimant's manager would tell him on May 23 he was terminated when his leave did not expire until May 28. The employer would not have unilaterally extended the leave to June 7 if it had terminated him on May 23.

DECISION:

The department decision dated June 28, 2012, reference 01, is affirmed. The claimant voluntarily quit without good cause when he failed to return from a leave of absence effective June 7, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css