

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEVI MATNEY
Claimant

APPEAL NO: 08A-UI-08290-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

H & H TRAILER COMPANY
Employer

**OC: 08/17/08 R: 01
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Levi Matney (claimant) appealed an unemployment insurance decision dated September 9, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with H & H Trailer Company (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 1, 2008. The claimant participated in the hearing with his father Stace Matney, who is also the employer's safety coordinator. The employer participated through John Murphy, Plant Manager and Tracey Roush, Human Resources. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

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 as a full-time painter on April 21, 2008 and worked through July 31, 2008. The claimant called in his absence on August 1, 2008 but was a no-call/no-show for three days on August 4, 5 and 6. The employer's policy provides that employees are considered to have voluntarily quit after three days of no-call/no-show.

The claimant went to the plant manager on August 8, 2008 to retrieve his final paycheck. He was asked why he did not report to work and the claimant responded that he quit because painting was not for him. The plant manager directed him to human resources where he could get his final paycheck. The claimant and his father, Stace Matney who is also employed with the employer, went to the human resources department where the claimant told Tracey Roush that he was quitting to join the military. Ms. Roush then provided the claimant with a voluntary quit form which the claimant completed. It states, "I, Levi A Matney, state that I am voluntarily quitting my job at the H & H Trailer Company. My last day of work was 7/31/08 and I received

my final paycheck on 8/8/08.” The claimant and Ms. Roush signed the document which contained sufficient room on the bottom on which the claimant could have put any comments but chose not to do so. The claimant was given his final paycheck. At no time did the claimant talk about being terminated.

The claimant now contends he was fired due to his three-day no-call/no-show but admitted he planned on quitting because of an unsafe work environment. He testified that Ms. Roush called him at approximately 5:00 a.m. on August 5, 2008 and told him he was fired. Ms. Roush does not have the authority to fire anyone and does not report to work until several hours after that time. The plant manager stated that he does not discharge anyone over the phone but only in a face-to-face meeting. The claimant contends he only signed the resignation form to retrieve his final paycheck. Both employer witnesses testified the claimant was not required to complete any form to get his paycheck. The claimant also contends that he was going to quit his employment due to an unsafe work environment. His letter to the fact-finder provides an in-depth explanation as to the unsafe work environment and that he asked to be moved out the paint booth due to these circumstances. The plant manager testified the claimant was moved out of the paint booth but that was because of his poor quality of work and not due to his request. The employer witnesses had no knowledge of any complaints by the claimant on the work conditions.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant’s separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant contends he was discharged prior to quitting but the evidence confirms otherwise. Rule 871 IAC 24.25 provides that, 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. 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 demonstrated his intent to quit by failing to call or report to work for three consecutive days and he carried out that intent by signing a voluntary resignation form on August 8, 2008.

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 § 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 § 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 was deemed a voluntary quit on August 6, 2008 after three days of no-call/no-show. It is his burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated September 9, 2008, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs