

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES FORD
Claimant

APPEAL NO: 18A-UI-05907-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

API INC
Employer

OC: 04/22/18
Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

James Ford, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated May 14, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant had voluntarily quit work on November 2, 2017, by failing to return to work for three days in a row and not notifying the employer of the reason. After due notice was provided, a telephone hearing was scheduled for and held on June 14, 2018. Claimant participated. Participating as a witness for the claimant was Mr. Justin Rettig, former fellow employee. Although duly notified, the employer did not respond to the Notice of Hearing and did not participate.

ISSUE:

The issue is whether the claimant left employment with good cause that was attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: James Ford was employed by API, Inc. from October 2, 2017 until Monday, November 6, 2017, when he requested to be laid off work because of personal matters. Mr. Ford was employed as a full-time laborer and was paid by the hour. The project superintendent was Mr. Bill Millsap.

Mr. Ford had requested permission in advance to be off work for three days. Mr. Ford was authorized to be away from work, and was expected to return to employment on Monday, November 6, 2017. Mr. Ford reported to the work site on November 6, 2017 wearing casual clothes instead of his work clothes. Mr. Ford spoke with the project's superintendent, Mr. Bill Millsap and Mr. Ford explained to Mr. Millsap that he could not come to work for an unspecified period of time because he needed to resolve court issues concerning his children. Mr. Ford indicated that he would like to later resume employment with the company after the court issues had been resolved.

It was the claimant's intention to ask Mr. Millsap to "lay him off" but work continued to be available at the work site. The project's superintendent was sympathetic to the reasons Mr. Ford had stated for needing to leave his employment but did not agree to give Mr. Ford a

voluntary lay off, as that was not the practice of the company while work continued to be available.

In the last week of December, 2017, Mr. Ford had completed most of his obligations, and wanted to return to employment. Mr. Ford sent a text and subsequently left a telephone message for Mr. Millsap, about resuming his employment with the company. Mr. Ford received no response.

Mr. Ford was a union member and registered for work through the union hall but did not attempt to return to work through the union, as Mr. Ford believed that there were other union members out of work who were ahead of him on the waiting list.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Code § 96.5-1-f provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

A claimant is not qualified to receive unemployment insurance benefits if her or she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). The claimant demonstrated his intention to quit and acted to carry out that intention when he informed the project superintendent on Monday, November 6, 2017, that he would not be returning to work that day and would be leaving employment because of court obligations related to his children. Mr. Ford expressed the hope of returning to the employment in the future, but the evidence establishes that no specific agreement was reached about if the claimant could return to work.

Mr. Ford's intention was to request that the general superintendent "lay him off from work" however, the evidence in the record does not establish that the employer was willing to grant the claimant's request to be laid off because work continued to be available.

Mr. Millsap was sympathetic to the claimant's reasons for leaving the employment, Mr. Millsap made no specific agreement to re-employ Mr. Ford in the future. Mr. Ford did request to be away from work for his personal family reasons, but did not specify the number of days. Mr. Ford left available work on November 6, 2017 and did not attempt to return to the employer and offer his services until late December, 2017.

In late December, 2017, Mr. Ford attempted to return to work by sending a text message and leaving a telephone message for Mr. Millsap. The claimant chose not to attempt to return to employment with the company through the union hall because he felt other worker's may have had seniority.

The administrative law judge concludes, based upon the evidence in the record, that Mr. Ford left the company for reasons that were compelling and personal, and that he had informed the employer of the reasons, prior to leaving. The period of time that Mr. Ford was away from work for these reasons, exceeded ten days allowed by statute. The employer correctly concluded that Mr. Ford had chosen to quit but initially misreported the claimant's separation had taken place because he had failed to report for work or provide notification to the employer for three or more consecutive work days.

An individual who requests to a lay-off is considered to have voluntarily quit because they voluntarily become unemployed. In this case however, the claimant's leaving was a voluntary quit for personal reasons.

Although sympathetic to the claimant's situation, the administrative law judge concludes that Mr. Ford voluntarily left his employment with API, Inc. for personal reasons that were not attributable to the employer. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated May 14, 2018, reference 01 is affirmed as modified. The portion of the termination disqualifying the claimant for benefits is affirmed. The portion of the termination finding that the claimant quit employment by failing to report or provide notification for three consecutive work days is modified to find that the claimant left employment for personal reasons that were not attributable to the employer

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn