

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA L HULL**  
Claimant

**APPEAL NO. 11A-UI-15292-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE SCHEBLER CO**  
Employer

**OC: 10/30/11  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated November 23, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 20, 2011. Claimant participated. Employer participated by Craig Cox, shop superintendent. The record consists of the testimony of Joshua Hull and the testimony of Craig Cox.

**ISSUE:**

Whether the claimant was separated from his employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a sheet metal company. The claimant was hired as a welder in September of 2005. He was a full-time employee. His last day of work was November 1, 2011.

The claimant worked a shift that began at 9:00 p.m. He was scheduled to go off work at 7:00 a.m. The claimant took a break at 2:00 a.m. When the claimant came back from his break, he found his supervisor, Justin Lillibridge, running his job. The claimant did not understand why. The claimant asked Mr. Lillibridge several times to leave his area so that he could go back to work. Mr. Lillibridge would not leave and would not speak to the claimant.

The claimant did not know what else to do and so he told the second in command, Tom Anderson, that he was leaving. Mr. Anderson told the claimant to go home. The claimant called his first shift supervisor on November 1, 2011, to discuss the problems the claimant was having with Mr. Lillibridge. The claimant thought a meeting would be set up where this could all be discussed. The employer called the claimant on November 2, 2011, and told the claimant that since he walked off the job he was considered to have voluntarily quit.

#### **REASONING AND CONCLUSIONS OF LAW:**

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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). 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. See 871 IAC 24.25.

The greater weight of the evidence in this case is that it was the employer who initiated the separation of employment. The claimant testified that he had a problem with his supervisor, Justin Lillibridge on November 1, 2011, that he did not know how to handle. Mr. Lillibridge was doing the claimant's job and would not leave nor would he talk to the claimant. The claimant told the second person in charge, Tom Anderson, what was going on and Mr. Anderson gave the claimant permission to leave. The claimant called his employer the next day to discuss the situation and thought a meeting would be set up so that the problems could be resolved. Instead the employer told the claimant that it considered the claimant a voluntary quit. The claimant did not quit. He may have left early but he had permission to do so from someone in management.

There is also no evidence of misconduct that would disqualify the claimant from receiving unemployment insurance benefits. Mr. Cox testified that the claimant was late from his break and was angry with his supervisor. The claimant then left without permission. The claimant testified that he was given permission to leave early by Tom Anderson. Even assuming the claimant left without permission, this would be a single absence from work. One unexcused absence does not constitute misconduct. See Sallis v. EAB, 437 N.W.2d 835 (Iowa 1989)

The administrative law judge concludes that the claimant was not separated from his employment for any disqualifying reason. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated November 23, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs