

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY D REED
Claimant

APPEAL NO. 08A-UI-00776-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORKERY INC
CORKERY WASTE DISPOSAL
Employer

OC: 11-04-07 R: 04
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 10, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 8, 2008, in Davenport, Iowa. Claimant did participate along with his witnesses: Dennis Griffith, Business Manager; Jody Spragle, Dispatcher; Fred Canarr, Driver; and Paul Green, Mechanic for Watts Freight. Employer did participate through Dennis Griffith, Business Manager, Jody Spragle, Dispatcher. Claimant's Exhibit A was received.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a semi driver, full-time, beginning on May 8, 2006, through November 7, 2007, when he voluntarily quit by failing to report for work or contact his dispatcher for twelve or thirteen consecutive days.

The claimant was a driver and was required to call into his dispatcher, Jody Spragle, on a daily basis when he was not scheduled so as to learn if work was available for him. The claimant lived in the Quad Cities area and the employer is physically located in Waterloo. The claimant parked his truck at the ESG or Watts Freights location, a sister company to the employer, Corkery Inc. The claimant returned from driving a load for the sister company on October 25, 2007. At approximately 3:00 p.m. he called and spoke very briefly to Ms. Spragle to learn that no other work was available for him at that time. Thereafter, the claimant ceased contacting Ms. Spragle or anyone else at Corkery Inc. Ms. Spragle attempted to contact the claimant via his company issued cell phone, but he did not return her call despite her messages asking him to call and check in.

The claimant was reporting to the ESG Watts location and talking to Paul Green, the lead mechanic. Both Mr. Green and driver Fred Canarr indicated that their understanding was the claimant was to contact dispatch on a daily basis to learn if work were available for him. No one from either Corkery Inc. or Watts ESG gave the claimant permission to stop calling his dispatcher, Ms. Spragle, and instead report to Mr. Green. Prior to October 2007 the claimant had called daily to speak to the dispatcher, Ms. Spragle, as was required of him.

The claimant and all the other drivers, including the other two who lived in the Quad Cities area, were instructed at a driver meeting on October 20 to call dispatch daily if not scheduled. Mr. Canarr attended the same meeting as the claimant and also lives in the Quad Cities area and testified that he was told to call dispatch daily at the October 20 driver meeting. The claimant and Ms. Spragle did not get along.

The claimant did not call his dispatcher, Jody Spragle, from October 25 until November 7 2007. On November 7, the claimant was told that he was discharged for his failure to contact the employer from October 25, 2007, through November 7, 2007. It was not the employer's responsibility to call the claimant, it was the claimant's responsibility to report into the employer on a daily basis, as he had done previously and had been instructed to do so.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer.

While the claimant may have reported to the Watts or ESG worksite, he was to call the employer on his company cell phone on a daily basis, which he did not do after October 25, 2007. The claimant chose not to call, because he did not get along with Ms. Spragle. Both Mr. Green and Mr. Canarr confirmed that the claimant was to call his dispatcher on a daily basis. The claimant did not ask for or receive permission from his employer to instead report to Mr. Green. Mr. Green's testimony makes clear that he knew the claimant was to be calling the dispatcher on a daily basis and not to be reporting to him. The claimant clearly knew the policy, as he had complied with it for almost one year prior to October 25, 2007. The claimant's conscious decision to violate the instruction given at the October 20 drivers meeting, as well as the practice, is misconduct. The claimant voluntarily quit his employment by failing to report to his employer for more than three consecutive days. Benefits are withheld.

DECISION:

The January 10, 2008, reference 01, decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw