

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JERRY CONN
517 SE 9TH ST
DES MOINES IA 50309-5017**

**JIM'S JOHNS INC
1005 SW BOULDER
DES MOINES IA 50315**

**Appeal Number: 06A-UI-07343-BT
OC: 06/18/06 R: 02
Claimant: Appellant (5)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Jerry Conn (claimant) appealed an unemployment insurance decision dated July 12, 2006, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Jim's Johns, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 8, 2006. The claimant participated in the hearing. The employer participated through owner, James McCaughey. Claimant's Exhibit A was admitted into evidence.

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 employed as a full-time laborer from April 3, 2006 through June 20, 2006, when he was considered to have voluntarily quit his employment. He worked for the employer in 2004 and quit and a condition of employment when rehired was that he would show up for work. On approximately April 30, 2006, the employer advised all employees that they would be considered to have voluntarily quit after three no-call/no-shows. The claimant was a no-call/no-show on May 29 and 30; June 19 and 20, 2006. The employer sent his last check home with a family member on June 20, 2006.

REASONING AND CONCLUSIONS OF LAW:

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

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when he was a no-call/no-show for three days in violation of the employer's policy.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. He has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated July 12, 2006, reference 02, is modified with no effect. 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.

sda/pjs