

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD W BURMEISTER
Claimant

APPEAL NO. 15A-UI-10938-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT FOODS GROUP INC
Employer

OC: 08/30/15
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Ronald Burmeister (claimant) appealed a representative's September 21, 2015, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Kraft Foods Group (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 14, 2015. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence. Kellie Erkin, Gale Cole, and Russell Burmeister observed the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 on October 4, 2006, as a full-time back service person. The claimant had filed for Family Medical Leave (FMLA) and extensions over a period of years. The claimant's last FMLA expired on February 28, 2015. The claimant forgot that his FMLA had expired. He continued to call in his absences and report them to the employer as FMLA related. The claimant reported FMLA absences on June 28, June 29, and July 1, 2015.

In late June 2015, the employer notified him that his FMLA had expired and the claimant had gone over his allowed attendance points. Rather than recertify his FMLA, the claimant told the employer he was quitting due to medical reasons. The claimant thought he might be terminated for his attendance but the employer did not tell him he was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(33) 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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's intention to voluntarily leave work was evidenced by his words and actions. When an employee quits work because he believes his performance or attendance is not to the satisfaction of the employer and the employer has not requested him to leave, his leaving is without good cause attributable to the employer. The claimant left work because he thought his attendance would result in his termination even though the employer did not request him to leave. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's September 21, 2015, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css