

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TRACY BLUE**  
Claimant

**AGRI STAR MEAT & POULTRY LLC**  
Employer

**APPEAL NO. 14R-UI-10487-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/20/14**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Tracy Blue (claimant) appealed an unemployment insurance decision dated August 11, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Agri Star Meat & Poultry, LLC (employer) without good cause attributable to the employer. A hearing was held in this matter on September 9, 2014, in Appeal Number 14A-UI-08666-GT and benefits were allowed. The claimant participated in the hearing while the employer did not. The employer appealed the decision claiming lack of notice and the Employment Appeal Board remanded for a new hearing. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Laura Roney, Payroll/HR Assistant and Supervisor Wayne Hill.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time yard worker from January 8, 2014, through July 23, 2014. He would have been discharged for excessive unexcused absenteeism but quit before that could happen. The claimant received a warning on March 3, 2014, for seven absences. He was absent due to illness, weather and personal reasons but the absences were not properly reported. The claimant received a second warning and three-day suspension on May 6, 2014, as a result of eight absences due to improperly reported illness.

Subsequent to the final warning, the claimant had eight additional unexcused absences. Three of these absences were no-call/no-shows. The claimant was a no-call/no-show on July 11, 2014, and July 20, 2014. He called in four minutes before he was scheduled on July 21, 2014,

and reported he would not work that day but failed to provide a reason. The claimant worked on and July 22, 2014, but failed to report to work at the beginning of his shift on July 23, 2014. He arrived at work around 11:00 a.m. and reported that he quit his employment.

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

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

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 reported to work on July 23, 2014, and told the supervisor he quit his employment.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and his separation from employment is disqualifying.

In the alternative, if the claimant's separation were characterized as a termination, the outcome would be the same since it would be due to excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer. 871 IAC 24.32(7).

The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Employment Appeal Bd*, 437 N.W.2d 895, 897 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins v. IDJS*, 350 N.W.2d 187, 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper v. IDJS*, 321 N.W.2d 6, 10 (Iowa 1982). The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds", *Higgins v. IDJS*, 350 N.W.2d 187, 191 (Iowa 1984), or because it was not "properly reported". *Cosper v. IDJS*, 321 N.W.2d 6, 10 (Iowa 1982) (excused absences are those "with appropriate notice"). The claimant was warned about his attendance but continued to be absent without proper notification. Work-related misconduct has also been established in this case. Benefits are denied.

**DECISION:**

The unemployment insurance decision dated August 11, 2014, (reference 01), is affirmed. 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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