

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEROD J OLSON
Claimant

PRESTAGE FOODS OF IOWA LLC
Employer

APPEAL 21A-UI-15884-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 17A.12(3) - Able to, Available for, Work Search

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 12, 2021, (reference 02) unemployment insurance decision that denied benefits based upon finding claimant voluntarily quit work on June 1, 2020. The parties were properly notified of the hearing. A telephone hearing was held on August 26, 2021. The claimant participated and testified. The employer participated through Carol McClurg, benefits and compensation supervisor.

ISSUE:

Did claimant voluntarily quit without good cause attributable to the employer? Was the claimant discharged for disqualifying job-related misconduct? Is the claimant able to and available for work?

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 January 13, 2020 as a full-time employee with a set schedule. On May 27, 2021, May 28, 2021 and May 29, 2021, the claimant did not appear for work and did not call to inform the employer of the reason for the failure to appear for work. The employer has a policy that an employee will be considered to have quit if the employee is absent for three days without giving notice to the employer. Claimant was aware of the no call/no show policy. Claimant called in to report he would not be to work on the following dates: May 6, 11, 13, 14, 15, 16, 18, 19, 20, 22 and 26, 2021. The claimant was considered to have quit on June 1, 2021 for failing to appear for work without notice for three days. Claimant offered no explanation for his no call no shows for May 27, 28 and 29 of 2021.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(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.

The claimant was absent from work for 3 days without giving notice to the employer. The employer has a rule that if the employee is absent without notice to the employer for three days the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on no call/no show absences from work for 3 days without giving notice to the employer. There is no evidence of good cause attributable to the employer.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant had 3 no call/no shows after having been eleven earlier called in absences in May 2020. Despite being

aware of the policy, claimant continued to engage in similar behavior, with the no call/no shows. Claimant voluntarily quit his employment without good cause attributable to his employer.

DECISION:

The July 12, 2021, (reference 02) unemployment insurance decision is AFFIRMED. The claimant voluntarily quit his employment without good cause attributable to his 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. This issue of able and available is moot.



Darrin T. Hamilton
Administrative Law Judge

September 8, 2021
Decision Dated and Mailed

dh/mh