

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BRIAN J BRIGGS

Claimant

APPEAL NO. 14A-UI-12398-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF MISSOURI VALLEY

Employer

OC: 04/27/14

Claimant: Appellant (3)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated November 19, 2014, reference 03, which denied unemployment insurance benefits finding that the claimant was discharged from work on October 7, 2014, for violation of a known company rule. After due notice was provided, a hearing was held in Council Bluffs, Iowa, on August 17, 2015. Mr. Briggs participated personally. Participating on behalf of the claimant was his wife, Mrs. Briggs. The employer participated by Mr. Todd Argotsinger, City Attorney and witnesses, Sergeant Lee Lang, Chief of Police Edward Murray and City Administrator, Rita Miller. Employer's Exhibits A, B and C were admitted into the record. Claimant's Exhibits One, Two and Three were entered into the record..

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Brian Briggs was employed by the City of Missouri Valley from November 13, 2009 until October 7, 2014, when he voluntarily quit employment in anticipation of being discharged. Mr. Briggs was employed as a full-time police officer and was paid by the hour. His immediate supervisor was the Chief of Police, Edward Murray.

Mr. Briggs voluntarily resigned in writing on October 7, 2014, during a meeting that was being held by the City Council of Missouri Valley, at the claimant's request. The meeting was being held to take information from members of the police force and from Mr. Briggs to determine whether Mr. Briggs should be retained as an employee with the City of Missouri Valley in the position of police officer.

The Chief of Police, Edward Murray, had recommended that Mr. Briggs be discharged from his employment because Mr. Briggs had violated the terms of a one-year disciplinary probation period that had been imposed in conjunction with a thirty-day unpaid suspension from work that had been given the claimant in April 2014. The suspension from work without pay and the

one-year disciplinary probation had been imposed on Mr. Briggs because of four incidents that had taken place during the months of January, February, March and April of 2014. Mr. Briggs had accepted the suspension without pay and the disciplinary probation on April 18, 2014. At that time, Mr. Briggs chose to remain employed as a police officer for the City of Missouri Valley by accepting the terms and conditions of the disciplinary action. Under the terms of the agreement, Mr. Briggs was specifically warned that "any violation of policy, including dishonesty violates the terms of the probation, and could result in termination from employment."

The final incident that caused Chief of Police Murray to recommend Mr. Briggs' termination to the City Council took place on September 20, 2014. On that date, Officer Briggs reported for his daytime work shift and was the only police officer patrolling the City of Missouri Valley. Officer Briggs was equipped with a police radio and a cellular telephone. In mid-morning, the police dispatcher reported to the chief of police that the dispatcher was unable to contact Officer Briggs for over one and one-half hours and that he was not responding to repeated calls. Because Officer Briggs was to be patrolling and had not responded to calls for over an hour and a half, the chief of police went to look for the claimant.

One of the places that Chief Murray looked for Officer Briggs was at Officer Briggs' father's residence in the City of Missouri Valley, Iowa. When Chief Murray approached the door and knocked, he was directed to a downstairs area by the senior Mr. Briggs. Chief Murray went to the downstairs area where he personally observed Officer Briggs covered with a blanket and sleeping. With some effort, Chief Murray was able to awaken the claimant. Chief Murray instructed Officer Briggs at that time to turn in his equipment and informed Officer Briggs that he would recommend Officer Briggs' termination from employment for sleeping on the job and violation of the terms of his one-year probation, whereupon Chief Murray left the premises.

A short time later, Officer Briggs contacted the dispatcher inquiring if the dispatcher had tried to contact him. Officer Briggs then stated that he was having radio trouble.

Because the Chief of Police had personally observed Officer Briggs sleeping during working hours in violation of the terms of the one-year disciplinary probation that Officer Briggs had been given, Chief Murray recommended to the City Council, on October 7, 2014, that the claimant be discharged from employment. A decision whether to terminate Officer Briggs or to retain him as a city employee was to be decided by the City Council. Mr. Briggs had requested that the City Council meeting be an open meeting. The purpose of the meeting was to take the information both from the Chief of Police and from Officer Briggs before making a decision.

Mr. Briggs and two union representatives arrived at the meeting approximately ten minutes late. After Chief Murray had stated the facts, as he knew them to the City Council, he recommended that Officer Briggs be dismissed from his job. Officer Briggs requested a short recess. During the recess the claimant's union representatives, with Officer Briggs' approval, tendered Officer Briggs' resignation from employment. Officer Briggs' intent was in part to protect his employment history, as he hoped in the future to be employed elsewhere. The claimant's resignation was accepted by the City Council and Mr. Briggs' employment with the City of Missouri Valley came to an end.

The claimant denies sleeping on duty on September 20, 2014. It is the claimant's position that he had radioed in that he was beginning a "lunch break" at approximately 10:30 a.m. and was taking his authorized one-hour lunch break at his father's downstairs area due to a migraine headache. The claimant asserts that his police radio must have been inoperable and cell phone

reception poor accounting for his lack of communication with the dispatcher for the one hour and thirty-six minute time period.

Mr. Briggs further asserts that he was not in agreement with previous disciplinary actions that had been given to him and therefore the one-year probationary period that he had accepted was unjustified and he should not be bound by its terms.

Mr. Briggs also asserts that Chief Murray's entering Mr. Briggs' father's home was an unlawful search motivated by a desire on the part of police management to find a reason to discharge him because he had asked for a change in weekend scheduling in the past.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged from employment or voluntarily quit. Based upon the evidence in the record, the administrative law judge concludes that Mr. Briggs quit employment in anticipation that he might be discharged from employment at the conclusion of a meeting of the Missouri Valley City Council that was meeting that day to decide whether his employment with the city would continue.

The next question before the administrative law judge is whether the evidence in the record establishes that the claimant left the employment with good cause attributable to the employer. It does not.

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.

In the case at hand, the claimant tendered both his verbal and written resignation during a City Council meeting prior to any determination by the City Council whether to retain the claimant as a City employee or to discharge him from employment. The purpose of the public City Council meeting that was held on October 7, 2014, was to take information from the Chief of Police as well as from Mr. Briggs so that the City Council could make a reasoned decision on whether to retain Mr. Briggs or not.

After the claimant and his union representatives heard the Chief of Police recommendation that Mr. Briggs be terminated from employment and the reasons for it, the claimant and his union representatives chose not to provide any statements or any other evidence in support of Mr. Briggs to the City Council. The claimant, on the advice of his union representatives, chose to tender his resignation from employment to be effective immediately. The claimant tendered his resignation at that time in anticipation that the City of Missouri Valley would discharge the claimant from his employment as a police officer.

Because the claimant had elected to quit his employment prior to any decision being made by Missouri Valley City Council, the claimant's separation was not a discharge from employment but a voluntary quit.

Because the evidence in the record establishes that Mr. Briggs had been properly warned in the past for violations of policy and that he had accepted the discipline imposed by his employer

and the reasons for it, the administrative law judge concludes that Mr. Briggs had not only been warned and had accepted not only the discipline but the basis for the discipline as well. The evidence in the record also establishes that Chief Murray acted appropriately after being informed that Officer Briggs was being unresponsive to repeated attempts to contact him by the dispatcher for an extended period of time. The Chief of Police recommendation that Mr. Briggs be discharged also was reasonable and not inappropriate based upon Officer Briggs' employment history, the warnings that had been served upon him and the final incident. The areas of dissatisfaction cited by the claimant were attributable to Mr. Briggs' own actions. The actions taken by the police department and Chief Murray were reasonable under the attendant circumstances and clearly related to the Chief's duty to manage officers under his supervision. Mr. Briggs' reasons for quitting were, therefore, not attributable to the employer but took place as a result of his own actions.

The claimant's final assertion is that members of the police force were intentionally trying to find a way to discharge him or make him quit because in the past he had requested a change in weekend work hours. The administrative law judge finds the claimant's assertion strains credibility and is not supported by the evidence in the record.

Upon application of the facts to the appropriate law, the administrative law judge concludes that Mr. Briggs quit employment without good cause attributable to the employer. Mr. Briggs left his employment in anticipation that he might be discharged from employment. While the claimant's reasons for leaving may have been personal good-cause reasons, they were not good-cause reasons attributable to the employer. Because the claimant left employment without good cause attributable to the employer, he is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated November 19, 2014, reference 03, is affirmed as modified. The portion of the determination disqualifying the claimant for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible is affirmed. The portion of the determination finding the claimant was discharged for disqualifying conditions is modified to find that the claimant left his employment without good cause attributable to the employer. The adjudicator's determination is affirmed as modified.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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