

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATHYANH M KORTHEK
Claimant

IOWA PREMIUM LLC
Employer

APPEAL 16A-UI-09919-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/14/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25(4) – No-call/No-show

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 8, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on September 28, 2016. The claimant Mathyanh Korthek participated and testified with the assistance of Arabic-Sudanese interpreters from CTS Language Link. The employer Iowa Premium LLC participated through Assistant Human Resource Manager Jenny Mora and Human Resource Manager Steve Armstrong. Claimant's Exhibit A was received into evidence.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a general laborer from May 11, 2016, until this employment ended on July 25, 2016, when he voluntarily quit.

According to the employer, on July 25, 2016, claimant punched in for work at 6:07 a.m. and then left without notice at 7:01 a.m. Mora testified it was discovered claimant had left shortly after 7:00 a.m. when a call was placed by his supervisor to human resources asking if they knew where he was. No one in human resources knew why claimant was not at work. Claimant did not come into work the following day or for the remainder of his shifts that week.

The employer has a policy in place which states that after three consecutive work days of being a no-call/no-show employees are deemed to have abandoned their jobs. Claimant was given a copy of this policy on May 11, 2016 when he was given the employee handbook. The employer

has no record of claimant ever returning to work or contacting them again, thus they considered him to have abandoned his job.

The claimant initially testified he did not go into work on July 25 because he was sick. Claimant later stated that was a mistake and he did go in on July 25, but left work early because he was not feeling well. According to the claimant he told a supervisor named David that he was not feeling well and David told him to go home, which he then did. Claimant testified he called in sick, leaving a message on the employer's sick line, the following day. Accordingly to claimant he returned to work on July 27 and was told to speak with Armstrong. Claimant testified Armstrong initially told him he was being terminated for leaving on July 25. According to claimant he explained to Armstrong what had happened and was given a three day suspension instead. Claimant testified when he had not heard anything from the employer by August 1 he called and spoke to a receptionist who confirmed he had been terminated. Claimant did not contact the employer again.

The employer was able to confirm there was a supervisor named David working that day, but according to both Mora and Armstrong, the supervisor would not have directed claimant to go home if he was not feeling well. Rather, the supervisor would have directed claimant to the onsite nurse who would then perform an examination and determine if he needed to be sent home. Claimant confirmed this had been the procedure in the past. Mora also testified there was no record of claimant calling into the hotline sick on July 26 and Armstrong denied any meeting with claimant on July 27 or anything after July 25. Armstrong further testified, had he spoken to claimant, he never would have told him he was suspended for three days.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 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 Code §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.

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 her 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. Claimant left work without notice on July 25 and did not return.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

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 § 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 § 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.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Claimant left work after only an hour on July 25, 2016. Claimant did not return to work or have any further contact with the employer. When claimant did not return to work or contact the employer again after July 25 he was considered to have voluntarily quit by abandoning his position. Claimant has not shown his reasons for quitting were with good cause attributable to the employer.

DECISION:

The September 8, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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