

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MOHAMED O SHIDANE
Claimant

AGRI STAR MEAT & POULTRY LLC
Employer

APPEAL 18A-UI-03171-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/18/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25(4) – Three-Day No-Call/No-Show

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 5, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit when he failed to come to work for three consecutive shifts and failed to report his absences to the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 5, 2018. The claimant, Mohamed O. Shidane, participated. The employer, Agri Star Meat & Poultry, L.L.C., participated through Laura Roney, Payroll/HR Assistant; and Jason Manning, Poultry Supervisor. Claimant's Exhibit A was received and admitted into the record. Somali/English interpreters Naima (ID number 6403) and Noor (ID number 9839) from CTS Language Link assisted with the hearing.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a foreman, from April 16, 2013, until February 20, 2018, when he quit. During the week of February 5, claimant complained to Manning and Carlos, another manager, about his line being behind. In Manning's presence, Carlos talked to claimant about working for one week in the poultry cut-up area to help understand why things were backing up and to see if he could help find a solution to the problem. On Wednesday, February 14, Carlos came to the poultry area and found that claimant was not working in the cut-up area as instructed. At that time, claimant told Carlos that he did not want to go to that area and Carlos reiterated that he needed to go there. Approximately one hour later, claimant still had not gone to the poultry cut-up area. At that point, Carlos and Manning met with claimant and interpreter Yassin in the office to discuss the issue. Claimant was told that he needed to finish out the week in the poultry cut-up area. Claimant was told that he would be sent home if he refused to work in the cut-up area. Claimant agreed to go to the poultry cut-up area and he left the office. Approximately fifteen minutes later, claimant returned to the office and reported that he was not feeling well and would like to go home. Yassin translated for this

conversation as well. Claimant was told that even if he went home that day, he would need to finish out the week in the poultry cut-up area. Claimant said that was fine but indicated he could not finish the day because his head hurt. Claimant then left work.

Claimant did not report to work for his scheduled shifts on February 15, February 16, or February 18. He did not call in to report that he would not be at work for any of these shifts. On Friday, February 16, Manning spoke to claimant's wife, who also works for the employer. She did not know where her husband was or why he was not at work. On the morning of Monday, February 19, Manning called Human Resources and confirmed that no one had heard from claimant since he last reported to work. At that point, Manning initiated paperwork separating claimant from employment. The employer has a policy stating that three consecutive no-call/no-shows will constitute a voluntary quit of employment. Claimant was aware of this policy. On January 25, 2018, claimant had received a warning for his attendance. He was absent from work on June 12 and December 20, 2017. On November 21, claimant was a no-call/no-show. On December 11, claimant left work early.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer. Benefits are withheld.

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.

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.

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, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's witnesses more credible than claimant.

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. In this case, claimant was a no-call/no-show for three consecutive shifts after resisting an assignment that was supposed to last for the remainder of his workweek. 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. Benefits are withheld.

DECISION:

The March 5, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn