

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KERVIN M MENDEZ BARRETO
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 17A-UI-01087-JP

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/08/17
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 25, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held at 3420 University Avenue, Suite A, in Waterloo, Iowa, on April 27, 2017. Claimant participated. CTS language link interpreter ID number 11067 interpreted on claimant's behalf. Aida Mendez appeared on claimant's behalf, but she did not testify. The employer elected not to participate.

ISSUES:

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 pork tail remover from September 12, 2016, and was separated from employment around December 19, 2016.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, unless the employee provides a doctor's excuse. The policy also provides that an employee will be warned as points are accumulated. The employer requires employees contact the employer and report their absence prior to the start of their shift. Claimant was aware of the employer's policy.

Claimant was scheduled to work the entire month of December 2016, Monday through Friday, except for any holidays. Claimant last worked for the employer on Monday, December 12, 2016. After December 12, 2016, claimant left for Puerto Rico because his mother was sick. On Tuesday, December 13, 2016, claimant called the employer and left a message stating he had to leave because of a family emergency; claimant's mother was sick. Claimant called the employer on Wednesday, December 14, 2016 and left a message stating he was in Puerto Rico

and had a situation with his family and he was not able to go to work. On Thursday, December 15, 2016, claimant did not call the employer. Around Friday, December 16, 2016, claimant had a doctor's letter sent to the employer. The doctor's letter stated claimant needed to take care of his mother from December 13, 2016 to January 6, 2017. After the employer received the doctor's letter, claimant called the employer and was informed that the employer was going to give the doctor's letter to human resources to see if it will be accepted. Approximately the next day, the employer told claimant that the employer would not accept the doctor's letter. The employer did not tell claimant he was discharged. Claimant did not tell the employer he quit. After the employer told claimant that the doctor's letter would not be accepted, he stopped calling the employer to report his absences. Claimant's last communication with the employer was around December 16, 2016, when the employer told him his letter from the doctor was not accepted.

Claimant returned from Puerto Rico on April 20, 2017. While Claimant was in Puerto Rico from December 13, 2016 to April 20, 2017, he was looking for work in Puerto Rico. Claimant made at least two job contacts a week when he was in Puerto Rico. Claimant did not have any restrictions on the type of work he was looking for.

The employer never told claimant he was discharged. Claimant never told the employer he quit. Because the employer did not accept the doctor's letter, claimant assumed that he was discharged because he had missed a lot of days and would violate the employer's absenteeism policy. Claimant never asked the employer if he was discharged. Claimant had no prior warnings for absenteeism.

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.

Iowa Code § 96.5(1)c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Admin. Code r. 871-24.26(8) provides:

This separation is not considered to be a voluntary quit.

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or marriage.

Iowa Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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).

Around December 16, 2016, the employer told claimant his doctor's letter was not accepted; however, the employer did not tell claimant he was discharged. Claimant testified he would have been scheduled to work Monday through Friday (except for holidays) in December 2016. Claimant testified he assumed he would be discharged due to the absenteeism policy, despite the employer not telling him he was discharged. Claimant's assumption that he was discharged was not reasonable. Claimant had no prior warnings for absenteeism from the employer and

the employer did not tell claimant he was discharged because the doctor letter was not accepted. Furthermore, claimant did not contact the employer after the conversation when the employer told him the doctor letter was not accepted. Finally, claimant failed to return to the employer to offer services after he returned from Puerto Rico. It is also noted that claimant's doctor letter only excused him until January 6, 2017, but he did not return from Puerto Rico until April 20, 2017.

Since claimant did not follow up with the employer after it told him his doctor letter was not accepted, and his assumption of having been fired was erroneous, his failure to continue to communicate with the employer or to report work upon the sufficient recovery of his mother is considered an abandonment of the job. Benefits are denied.

DECISION:

The January 25, 2017, (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 claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs