

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DATARIUS D SPATES
Claimant

CG ACQUISITION CO
Employer

APPEAL 16A-UI-07539-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/27/15
Claimant: Appellant (5)

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 June 29, 2016, (reference 04) unemployment insurance decision that denied benefits based upon his discharge for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on July 27, 2016. The claimant Datarius Spates participated and testified. The employer CG Acquisition Co. did not participate.

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 line worker from October 26, 2015, until this employment ended on May 6, 2016, when he voluntarily quit.

On May 6, 2016, claimant called it to the employer's automated system to indicate he would not be in to work that day. Claimant was missing worked due to problems he was having with his knee. The employer has an attendance policy in place, which states that employee's may be terminated after reaching ten attendance points. Claimant knew this absence would be his tenth point and assumed he would be terminated. Based on this this assumption, claimant did not return to work again. No one from the employer told claimant he had been terminated or indicated that if he did not resign he would be terminated.

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.

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 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). Since claimant was not told that his employment had been terminated by anyone at the employer, but stopped reporting to work he is considered to have abandoned his job. Benefits are denied.

DECISION:

The June 29, 2016, (reference 04) unemployment insurance decision is modified with no change in effect. Claimant was not discharged but 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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