

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L SHEPARD

Claimant

APPEAL NO. 14A-UI-06915-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC

Employer

OC: 02/16/14

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge
871 IAC 24.1(13) – Other Separations

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 27, 2014, reference 03, which denied unemployment insurance benefits finding that the claimant voluntarily quit work on June 8, 2014 because of a non-work-related illness or injury. After due notice was provided, a telephone hearing was held on August 27, 2014. After a late call, Mr. Shepard participated. Participating as a witness for the claimant was his personal friend, Ms. Alex Waterman. The employer participated by Ms. Diane Guerrero, Human Resource Manager, and Ms. Aleshia Arias, Human Resource Assistant.

ISSUE:

The issue is whether the claimant voluntarily quit employment with good cause, or whether the claimant was discharged for misconduct or whether the claimant's employment ended due to an other separation.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Terry Shepard began employment with Agri Star Meat & Poultry, LLC on March 5, 2014. The claimant was employed as a full-time cooler department lugger and was paid by the hour. The claimant's last day of work with Agri Star Meat & Poultry, LLC was June 2, 2014. The employer concluded Mr. Sheppard had quit his job effective June 8, 2014 because he had not kept the employer notified on a daily basis of his need to be absent, as agreed by the parties in the terms of a medical leave of absence.

On or about June 2, 2014, Mr. Shepard informed Agri Star Meat & Poultry, LLC that he needed to be off work due to a non-work-related shoulder condition and provided a light-duty limitation medical slip to the employer because of a non-work-related injury. The employer was unable to accommodate Mr. Shepard's request for light-duty work in the department, however, the parties agreed that the employer would keep the claimant's job position open for him pending his

surgery and full recovery from his shoulder surgery. The parties agreed that the claimant could resume work in his job position when he presented a full release from his physician for the non-work-related injury. The parties also agreed that Mr. Shepard needed to call in on a daily basis to keep the employer apprised of his status and to verify Mr. Shepard's intention to return to work.

Mr. Shepard later underwent shoulder surgery and was later authorized to perform light-duty work. Mr. Shepard initially called in to his employer on a daily basis to report his status to the employer, and the employer continued to keep Mr. Shepard's job position open for him under the terms of the agreement. Later Mr. Shepard re-opened his claim for unemployment insurance benefits and received a disqualification decision from Iowa Workforce Development that was dated June 27, 2014. Mr. Shepard stopped calling the employer after that date because the adjudicator's decision stated that he had quit his employment. When he did not call in for three or more consecutive work days, he was considered to have quit his employment based upon the employer's rule that failure to report or call in for three consecutive work days is considered to be a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

In the case at hand the claimant and Agri Star Meat & Poultry, LLC entered into a leave of absence agreement when the claimant needed to be off work for surgery and recuperation. The employer agreed to keep Mr. Shepard's job position open for him until he was fully released to resume full employment. Mr. Shepard, in turn, agreed that upon being fully released by his physician he would return to his job and, in the interim, promised to keep the employer notified on a daily basis of his status pending his full release from his physician.

Iowa Admin. Code r. 871-24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Both Mr. Shepard and Agri Star Meat & Poultry LLC honored the terms of the leave of absence agreement until Mr. Shepard discontinued calling in each day as previously agreed. Mr. Shepard did not maintain contact with his employer as previously agreed after August 6, 2014. After the claimant had failed to provide the ongoing required notification for three or more

consecutive work days in violation of the leave of absence agreement and company policy, the employer concluded that Mr. Shepard had quit his employment. The claimant's leave of absence ended when he discontinued calling in on a daily basis as agreed under the provisions of the above cited portions of the Iowa Administrative Code where an individual fails to return to work at the end of a leave of absence is considered to have voluntarily quit and is ineligible for benefits.

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.

The claimant's failure to maintain ongoing contact with his employer as agreed constituted a quit of employment after the claimant failed to continue the required contact for three or more work days. The claimant's reasons for leaving employment were not attributable to the employer and therefore disqualifying under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld until the claimant 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 June 27, 2014, reference 03, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs