

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAMEAN D SPATES
Claimant

APPEAL 16A-UI-08658-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

**OC: 07/10/16
Claimant: Appellant (5)**

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

STATEMENT OF THE CASE:

Damean D. Spates filed an appeal from the August 3, 2016, (reference 02) unemployment insurance decision that denied benefits based upon the determination Packers Sanitation Services, Inc. discharged him for excessive unexcused absenteeism. The parties were properly notified about the hearing. A telephone hearing was held on August 26, 2016. The claimant participated personally. The employer participated through Employer Relation Program Coordinator Andrea Ramirez.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the 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: The claimant was employed full-time as a Laborer beginning on August 4, 2015, and he was separated from work on November 3, 2015.

On November 2, 2015, the claimant missed work because he was sick. On November 3, 2015, the claimant arrived to work and was approached by his supervisor who told him to wait in the cafeteria. His supervisor spoke to a manager in a green hat and then told the claimant to go home. He did not tell the claimant he was discharged. The claimant did not go back to work or contact anyone else at the company as he believed he had been discharged for missing work the day prior. The claimant did not contact anyone else who worked for the employer about the status of his job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's was not discharged from his employment but voluntarily quit without good cause attributable to the employer. Benefits based upon wages credited from this employer's account are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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). Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the claimant left work after being told to go home. He was not told he was discharged. He did not report to work the following day. The claimant's failure to report to work indicates an intention to voluntarily quit his employment.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Generally, when an individual mistakenly believes he is discharged from employment, but was not told so by the employer, and he discontinues reporting for work, the separation is considered a quit without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25(33). Since the claimant did not follow up with management personnel or the owner, and his assumption of having been fired was erroneous, his failure to continue reporting to work was an abandonment of the job. Accordingly, benefits are denied.

DECISION:

The August 3, 2016, (reference 02) unemployment insurance decision is modified with no change in effect. The claimant voluntarily left the 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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