

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HENRY A BRADFORD**  
Claimant

**ABRH LLC**  
Employer

**APPEAL 15A-UI-08600-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/05/15**  
**Claimant: Appellant (1)**

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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 July 24, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 4, 2015. Claimant participated through attorney, Joel Saldivar. Employer participated through representative, Michele Hawkins, and general manager, Gary Mariman.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge 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 cook from May 20, 2013, and was separated from employment on July 11, 2015, when he quit.

On July 8, 2015, claimant was scheduled to work the 7:30 a.m. to 2:30 p.m. shift. Claimant did start his shift on July 8, 2015. On July 8, 2015, claimant clocked out at 9:08 a.m. Claimant never returned after he clocked out. Mr. Mariman and claimant had a brief conversation when Mr. Mariman came to work on July 8, 2015 around 8:00 a.m. Claimant wanted to talk about his schedule. Mr. Mariman told claimant they would talk when he got some available time. This was the last time Mr. Mariman spoke to claimant.

Claimant failed to report for work or notify the employer of his absences for three consecutive scheduled workdays on July 9, 2015, July 10, 2015, and July 11, 2015 in violation of the employer's policy. Claimant was scheduled for the particular shifts on these three days because other employees had requested time off and claimant was needed to cover some shifts. Mr. Mariman posts the work schedules eight days prior to the start of the schedule. Claimant never tried to talk to Mr. Mariman about the schedule until July 8, 2015.

The employer has a no-call/no-show policy, but the employer does follow the local rule of three consecutive days is determined a voluntary quit. The policy is in the employee handbook, which claimant received. Claimant was aware an employee could be terminated as a result of a no-call/no-show.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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(18) and (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 §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 § 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:

(18) The claimant left because of a dislike of the shift worked.

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

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. Claimant left work without finishing his shift on July 8, 2015. Claimant was scheduled to work on July 9, 2015, July 10, 2015, and July 11, 2015. Claimant did not work any of these three consecutive days. Claimant also did not call the employer to tell them he was not going to work on these three consecutive days. The schedule is released at least seven days prior to the first date on the schedule. 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. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

**DECISION:**

The July 24, 2015, (reference 01) unemployment insurance decision is affirmed. 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.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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