

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**NANCY X HUYNH**  
Claimant

**SEABOARD TRIUMPH FOODS, LLC**  
Employer

**APPEAL 20A-UI-13886-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/10/20**  
**Claimant: Appellant (5)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On November 2, 2020, Nancy Huynh (claimant/appellant) filed a timely appeal from the October 26, 2020 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on June 12, 2020 by failing to report to work for three days in a row.

A telephone hearing was set for January 5, 2021. At that time the parties agreed to a continuance so proposed exhibits could be submitted.

A telephone hearing was held on January 25, 2021. The parties were properly notified of the hearing. The claimant participated personally. Seaboard Triumph Foods, LLC (employer/respondent) participated by HR Supervisor James Nelson.

Claimant's exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was October 21, 2019. Claimant worked for employer full-time as a production worker. Claimant's immediate supervisor was Sarah Gutierrez. The last day claimant worked on the job was June 10, 2020. Claimant separated from employment on June 25, 2020. Claimant quit effective with that date.

Claimant was absent from work from June 11 through June 25, 2020. Claimant called in to report her absence as required each day from June 11 through June 22, 2020. She did not call in to report her absences on June 23, 24, and 25, 2020. Employer's attendance policy provides that three consecutive no-call, no-show absences constitute a voluntary quit.

Claimant did not attempt to return to work after June 25, 2020. Claimant did call into employer after she learned she was terminated and left a voicemail for an HR representative requesting a call back. However, employer did not respond to the voicemail in accordance with union policy regarding contact between employer and employee following termination.

Claimant has filed a weekly claim for benefits each week from the benefit week ending May 16, 2020 and continuing through August 1, 2020.

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

For the reasons set forth below, the October 26, 2020 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on June 12, 2020 by failing to report to work for three days in a row is MODIFIED with no change in effect. Claimant voluntarily quit work on June 25, 2020 by failing to report to work for three days in a row.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 provides in relevant part:

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

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. 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).

It is the duty of the administrative law judge, as 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 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. *Id.* 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 believable evidence; 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. *Id.*

The administrative law judge found the testimony offered by employer to be more reliable than the testimony offered by claimant on one important issue. Claimant initially testified that she did not call in to report her absences after June 22, 2020, because she logged into employer's ADP website and that indicated she had been terminated. Claimant provided a screenshot to that effect. However, the screenshot was captured well after June 22, 2020. Claimant initially testified that she was sure she looked at that screen before June 25, 2020 and that it indicated she was terminated. However, claimant was unable to explain how she was positive of that. She later acknowledged she was not sure when she viewed that screen and that it may have been before or after June 25, 2020.

On the other hand, employer testified that the system would not have indicated claimant had been terminated until approximately 24 hours after June 25, 2020, as it would not have notated her as terminated until her third no-call, no-show absence and because it takes approximately 24 hours for the website to "refresh" an employee's status. Because employer's testimony was more consistent than claimant's, the administrative law judge finds claimant's failure to call in and report her absences took place prior to the ADP website indicating she was terminated.

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer. Claimant was absent for three days without giving notice to employer in violation of company rule. This constitutes a voluntary resignation under Iowa law. The resignation was not with good cause attributable to employer. Benefits therefore must be denied from the date of separation and continuing until claimant earns wages for insured work equal to ten times her weekly benefit amount.

**DECISION:**

The October 26, 2020 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on June 12, 2020 by failing to report to work for three days in a row is MODIFIED with no change in effect. Claimant voluntarily quit work on June 25, 2020 by failing to report to work for three days in a row.

Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

February 10, 2021  
Decision Dated and Mailed

abd/mh

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.