

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TCHIZABALO A BEHEZI
Claimant

APPEAL 19A-UI-05642-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 06/23/19
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On July 16, 2019, the employer filed an appeal from the July 12, 2019 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer failed to establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held on August 8, 2019. The claimant, Tchizabalo A. Behezi, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, West Liberty Foods, L.L.C., participated through Karyn Goldensoph, Human Resource Supervisor. Employer's Exhibits 1, 2, and 3 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

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?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for West Liberty Foods on May 2, 2019. He was employed full-time with the employer, most recently as a raw pack employee. Claimant was employed in this capacity until June 28, 2019, when he quit.

Claimant last reported to work on Friday, June 21, 2019. Claimant was scheduled the following week. However, he failed to come to work on June 24, June 25, June 26, or June 27. Goldensoph called claimant on June 28 to inquire whether he intended to continue working. Claimant told her, "Yeah, I quit." Claimant did not give a reason for quitting. Continued work was available at that point, had claimant not quit his job.

The employer maintains an attendance policy. (Exhibit 2) Under this policy, an employee who has three consecutive no-call/no-show absences is deemed to have voluntarily quit his employment. (Exhibit 2) Claimant received a copy of this policy. (Exhibit 3)

The administrative record reflects that claimant has received no unemployment since filing a claim with an effective date of June 23, 2019. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal. Goldensoph was out of the office when the fact-finding interview occurred, so she did not participate.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant quit his employment without good cause attributable to the employer. Benefits are withheld.

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 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.

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 the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). The employer provided credible and unrefuted testimony that claimant voluntarily ended his employment, and that the separation was not by the employer's choice. Therefore, this case will be analyzed as a quit from employment.

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. In this case, claimant missed four days of work in a row without calling in to let his employer know he would be absent. Inasmuch as the claimant failed to report for work or notify the employer for over 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. Benefits are withheld.

As claimant has not received any benefits since separating from this employer, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The July 12, 2019, (reference 01) unemployment insurance decision is reversed. Claimant was not discharged but separated from 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. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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