

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRETT A PRESLEY
Claimant

BAUER BUILT MANUFACTURING INC
Employer

APPEAL 21A-UI-12517-ML-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/07/21
Claimant: Respondent (2)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the May 10, 2021, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 8, 2021. The claimant, Brett Presley, did not register a telephone number and did not participate. The employer, Bauer Built Manufacturing Inc., participated through Brad Mueggenberg and Chris Sprecher.

Employer's Exhibits A, B, and C were offered and admitted into the evidentiary record.

ISSUES:

Whether the claimant was overpaid benefits?
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview?
Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an over-the-road truck driver. He was employed from August 17, 2020, until February 19, 2021. Chris Sprecher was claimant's immediate supervisor.

The employer has an attendance policy stating that if an employee fails to report an absence for three consecutive working days they are considered to have voluntarily quit their employment. The attendance policy is detailed in the employee handbook. Claimant was made aware of the policy when he was hired.

Claimant last physically worked for the employer on February 15, 2021. Claimant reported to Paton, Iowa on February 16, 2021, but had to leave early because he was feeling sick. The

employer asserts claimant was then a no call/no show on February 17, 18, and 19, 2021. The employer did not have any contact with the claimant until March 13, 2021, when claimant texted Mr. Sprecher and provided he would be coming in to clean out his truck.

There was continuing work available had claimant not voluntarily quit his employment.

Claimant had received prior warnings for attendance issues. Claimant was absent for more than one week in October 2020. Management had a discussion at that time and ultimately decided to keep claimant on as an employee. Claimant understood the employer would not tolerate such actions in the future.

Despite the favorable May 10, 2021, decision, the administrative record reflects that claimant has not received regular unemployment insurance (UI) benefits.

The administrative record reveals the employer participated in the fact-finding process by completing a questionnaire.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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 a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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).

In this case, claimant declined to present to work or otherwise contact his employer between February 17, 2021, and March 13, 2021. While there is evidence that claimant was ill on February 16, 2021, he failed to call in or otherwise report his sickness as his reason for missing work on February 17, 18, and 19, 2021.

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 § 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:

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

The employer had a policy that three days of not calling and not showing up for work was deemed job abandonment and a voluntary resignation. Claimant knew of the employer's no call, no show policy. Claimant had received prior warnings for his absenteeism.

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. 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. Benefits are denied.

The issues of whether claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged are moot as the administrative record reflects that claimant has not received any regular unemployment insurance (UI) benefits and the undersigned found claimant is not entitled to any benefits in the matter at hand.

DECISION:

The May 10, 2021, (reference 02) unemployment insurance decision is reversed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.



Michael J. Lunn
Administrative Law Judge
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July 29, 2021
Decision Dated and Mailed

mjl/lj