

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAWRENCE L MERRICK
Claimant

WINNEBAGO TRIBE OF NEBRASKA
Employer

APPEAL 15A-UI-12284-SC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/04/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Lawrence Merrick (claimant) filed an appeal from the October 20, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination Winnebago Tribe of Nebraska (employer) discharged him for excessive unexcused absenteeism. The parties were properly notified about the hearing. A telephone hearing was held on November 23, 2015. The claimant participated on his own behalf. The employer participated through Human Resources Generalist Cindy Coleman.

ISSUES:

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 Housekeeping Porter beginning on January 28, 2015, and his last day worked was July 3, 2015. On that day, the claimant was injured. He presented a note from his doctor to the employer that excused him from work for seven days. The employer granted the claimant a leave of absence through July 18, 2015. The claimant also filed a Workers' Compensation (WC) claim with his employer.

On July 17, 2015, the claimant saw his doctor who indicated he needed to be on light duty. The claimant contacted Safety and Wellness Coordinator Anthony Yellowbanks who was working with the claimant on his WC claim. Yellowbanks explained to the claimant his WC claim was being denied due to a preexisting injury. The claimant also asked Yellowbanks about a rumor his wife heard from another employee stating he had already been discharged. Yellowbanks confirmed the claimant had been discharged. Yellowbanks did not have the authority to discharge the claimant from his employment. The claimant also did not submit his return to work on light duty doctor's note to the employer as he believed he had been discharged.

The claimant's supervisors Mike Snow and Frank White scheduled the claimant to return on July 18, 2015. The claimant's supervisors were the ones with the authority to end the claimant's employment and were also the individuals whom the claimant should have contacted if he needed to be off work. The claimant did not contact his supervisors and on August 3, 2015, White signed the claimant's termination paperwork as he was no-call/no-show for three days.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer. Benefits are denied.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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 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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

The claimant did attempt to follow up on the rumor of his termination. However, he contacted the person with whom he had been working on his WC claim and not his supervisors who had the authority to end his employment. Since the claimant did not follow up with management personnel, and his assumption of having been fired was erroneous, the failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The October 20, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to 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

src/pjs