IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

MELVIN L BENSON
Claimant

SWIFT & COMPANY
Employer

APPEAL NO: 09A-UI-07567-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/11/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Melvin L. Benson (claimant)) appealed a representative's May 18, 2009 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2009. The claimant participated in the hearing. Tony Luse appeared on the employer's behalf and presented testimony from one other witness, Nora Rico. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 17, 2008. He worked full time as a production worker on the first shift, 6:00 a.m. to approximately 2:30 p.m., in the employer's JBS Marshalltown pork processing facility. His last day of work was April 7, 2009.

At approximately 9:15 a.m. on April 7 the claimant's foreman, Ms. Rico, sent the claimant to go get knives to do a different job than the one he had been doing on a saw. The claimant preferred to do the work on the saw, but agreed and left the area, presumably to get the knives. However, the claimant did not return to work. After a while Ms. Rico searched for the claimant, and it was discovered that he had left the facility without further discussion. Ms. Rico waited a day to see if the claimant would seek to return to work, as he had a prior time where he had walked off work and then requested and was permitted to return to work. Ms. Rico spoke to the claimant's niece who worked at the facility, who said she had heard that he had left Marshalltown.

When the claimant was a three-day no-call/no-show for work on April 8, April 9, and April 10, the employer determined him to have quit by job abandonment under its three-day no-call/no-show policy, of which the claimant was on notice.

The claimant asserted at the hearing that he had been told to leave on April 7 due to attendance. However, as of April 7 the claimant only had seven points under the employer's ten-point attendance policy. While Ms. Rico acknowledged that she had previously generally advised the claimant that he was missing a lot of work for only being on the job for not even six months, she credibly testified that she did not say anything to him on April 7 that he should leave because of his attendance.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that the separation was not "voluntary," but that he had been told to leave due to his attendance. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that on April 7 the employer did not discharge him or send him home due to his attendance.

Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as leaving rather than performing work as assigned, leaving when work is available and the employee has not been told he was discharged, and being a three-day no-call.no-show in violation of company policy. 871 IAC 24.25.

The claimant left rather than performing available work and was not discharged, and further was a three-day no-call/no-show; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's May 18, 2009 decision (reference 04) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of April 7, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/css