

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDALL L ALBERT
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-22525-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/22/21
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from the September 28, 2021 (reference 01) unemployment insurance decision that denied benefits because he voluntarily quit his employment with Tyson Fresh Meats on August 3, 2021 by failing to report to work for three consecutive shifts without notifying employer. The parties were properly notified of the hearing. A telephone hearing was held on December 3, 2021. Claimant participated. Employer did not participate. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a voluntary quit without 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 as a full-time Production Worker from May 21, 2012 until his employment with Tyson Fresh Meats ended on August 3, 2021. Claimant worked Monday through Saturday for eight hours per day.

Claimant last performed work for Tyson Fresh Meats on July 13, 2021. Claimant was absent the following two weeks due to his use of alcohol. Claimant did not notify employer of his absences prior to the beginning of his shifts. Claimant's sister attempted to contact employer and left a message for claimant's supervisor. The dates claimant's sister contacted employer are unknown.

Claimant was admitted to a rehabilitation facility on or about August 1, 2021. Claimant had access to a telephone at the facility but did not contact employer to notify employer that he would be absent from work. On or about August 4, 2021, the facility contacted employer regarding claimant's health insurance. Employer notified the facility that claimant's employment was terminated. The facility informed claimant.

Employer has a policy stating three consecutive no-call/no-show absences is considered job abandonment. Claimant was aware of the policy.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, 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); *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).

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 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 was absent from work for over two weeks without notifying employer. Claimant's sister attempted to notify employer on claimant's behalf; the dates of her attempts are unknown. When claimant had access to a telephone, he did not attempt to contact employer. Employer has a three-day no-call/no-show policy. Claimant was aware of the policy. Claimant is considered to have voluntarily quit his employment by failing to report to work for three consecutive shifts without notifying employer. Claimant was absent for personal reasons not attributable to his employment. Claimant has not met his burden of proving he voluntarily quit his employment for good cause attributable to employer. Benefits are denied.

DECISION:

The September 28, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 10, 2021
Decision Dated and Mailed

acw/ACW