

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD D FELDHACKER
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 19A-UI-07574-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/25/19
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 16, 2019 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on October 9, 2019. The claimant, Richard D. Feldhacker, participated personally. The employer, Tyson Fresh Meats Inc., participated through witness Christy Chappellear. Employer's Exhibits 1 through 3 were admitted.

ISSUE:

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 a general maintenance worker. He began working for this employer on July 31, 2017 and his employment ended on August 22, 2019. His job duties included tearing down equipment, cleaning equipment and preparing equipment for production. His immediate supervisor was Terry Weatherford.

Claimant was on medical leave due to a non-work related injury beginning June 19, 2019. His medical leave ended August 16, 2019. He returned to work on August 17, 2019 with restrictions to avoid repetitive deep squatting and crawling. He worked his regular shift and was told by his supervisor to do what he could. On August 18, 2019, claimant notified the employer that he was unable to work his shift and was allowed to use Family and Medical Leave Act ("FMLA") leave. See Exhibit 1.

Claimant was scheduled to work August 19, 20, and 21, 2019 but he did not call in and did not show up for his scheduled shifts. The employer has a written policy that states three consecutive no-call/no-shows is considered a voluntary quitting. Claimant was made aware of this written policy at the time he was hired and the policy is displayed in the cafeteria as well.

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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, claimant was absent from work on August 19, 2019, August 20, 2019 and August 21, 2019. Claimant knew that he was supposed to report any absences prior to his scheduled shift start time. Claimant failed to report these absences in violation of the employer's written policy.

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 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's voluntary quitting of the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The September 16, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs