IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

JAMES H HARRINGTON
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 19A-UI-00871-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/06/19
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

James Harrington filed a timely appeal from the January 23, 2019, reference 01, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Harrington voluntarily quit on January 10, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 14, 2019. Mr. Harrington participated. Katie Schoepske represented the employer. Exhibits A, B and C were received into evidence.

ISSUES:

Whether Mr. Harrington voluntarily quit without good cause attributable to the employer.

Whether Mr. Harrington was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Harrington was employed by Tyson Fresh Meats, Inc. as a full-time maintenance worker from April 2018 and last performed work for the employer on December 24, 2018. Mr. Harrington's work hours during the relevant period were 5:00 a.m. to 5:30 p.m., Sunday through Wednesday. After Mr. Harrington completed his shift on Monday, December 24, 2018, he was next scheduled to work on Wednesday, December 26, 2018. Mr. Harrington did not report for work on December 26, 2018.

If Mr. Harrington needed to be absent from or late for work, the employer's absence reporting policy required that Mr. Harrington called the designated maintenance department absence reporting number at least 30 minutes prior to the scheduled start of his shift and provide appropriate information in response to the automated prompts. The employer reviewed the absence reporting requirement with Mr. Harrington at the start of his employment and Mr. Harrington was familiar with the absence reporting requirement.

On the morning of December 26, 2018, Mr. Harrington was ill and sought medical evaluation at a hospital before the scheduled start of his shift. Mr. Harrington finished at the hospital after the

scheduled start of his shift. Mr. Harrington had not reported his need to be absent to the employer at least 30 minutes prior to the scheduled start of his shift. Based on his prior accrual of attendance points, and based on a December 6, 2018 interaction with Adam Pernell, Special Maintenance Department Superintendent, Mr. Harrington assumed that he was discharged from the employment in light of the December 26 absence. Mr. Harrington did not take any steps to report the absence on December 26 and did not otherwise contact the employer that day. The employer documented the absence as a no-call/no-show. The employer did not notify Mr. Harrington that he was suspended or discharged in connection with the December 26 absence.

Mr. Harrington's next scheduled work day was Sunday, December 30, 2018. Based on his erroneous belief that he was discharged, Mr. Harrington did not report for work that day and did not notify the employer of his need to be absent that day. The employer documented a no-call/no-show absence.

Mr. Harrington's next scheduled work day was Monday, December 31, 2018. Mr. Harrington did not report for work that day and did not report to the employer a need to be absent that day. The employer again documented a no-call/no-show absence. However, on that day, Mr. Harrington contacted a maintenance department employee and told that person that he "knew" the employer had terminated his employment because he only needed one point and had previously been walked out the door. The reference to being walked out the door was a reference to the December 6, 2018 incident. In connection with that earlier incident, Mr. Harrington had given proper notice to the employer of his need to be absent due to illness on December 5, had completed the required request form, and had returned to work on December 6. On December 6, the employer initially could not locate the time-off request form and notified Mr. Harrington that he was discharged from the employment for attendance. After Mr. Harrington's locker was cleaned out and after he had returned his tools to the appropriate maintenance department employee, but before the employer escorted Mr. Harrington from the workplace, the employer located the time-off request form. The employer rescinded the discharge decision and allowed Mr. Harrington to continue in the employment. However, Adam Pernell, Special Maintenance Department Superintendent, told Mr. Harrington at that time that he was not going to "save" Mr. Harrington again. The maintenance department employee Mr. Harrington called on December 31 was the same employee to whom Mr. Harrington had delivered his work tools on December 6. During the December 31 contact, the maintenance department employee did not tell Mr. Harrington that Mr. Harrington was discharged from the employment and did not confirm or deny Mr. Harrington's assertion that the employer had discharged Mr. Harrington from the employment. Mr. Harrington told the maintenance department employee that he would return his tools later in the week.

Mr. Harrington did not make further contact with the employer. Mr. Harrington had a coworker return his tools to the appropriate maintenance department employee. The employer continued to document no-call/no-show absences. The employer documented additional, consecutive no-call/no-show absences on January 2, 6, 7 and 8. Under the employer's attendance policy, an employee who is absent for five consecutive days without notice to the employer is deemed to have abandoned the employment. This was part of the attendance policy the employer reviewed with Mr. Harrington at the start of the employment. On January 8, 2019, the employer documented a voluntary separation from the employment. The employer did not send anything to Mr. Harrington to memorialize the separation.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 871-24.25.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993).

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

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.

The weight of the evidence in the record establishes a voluntary quit without good cause attributable to the employer. Despite Mr. Harrington's prior accumulation of attendance points and despite the December 6, 2018 rescinded discharge, Mr. Harrington's assumption on December 26 that he was discharged from the employment was not a reasonable assumption. What transpired on December 26 was markedly different from what transpired on December 6. On December 6, the maintenance department management staff had taken Mr. Harrington through the multiple-step process of ending his employment. There was no similar process on December 26. Even toward the end of the process on December 6, the employer was willing to reconsider the discharge decision and did indeed reconsider the discharge decision. Mr. Pernell's comment about not "saving" Mr. Harrington in the future did not mean that Mr. Harrington would automatically be discharged in the future without process.

Mr. Harrington's erroneous assumption on December 26 that he was discharged short-circuited the further contact, discussion and process that would otherwise have taken place to clarify Mr. Harrington's employment status. Based on Mr. Harrington's continued absence from the workplace and his continued failure to notify the employer of his need to be absent, the employer reasonably concluded that Mr. Harrington had abandoned the employment. Mr. Harrington is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Harrington must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The January 23, 2019, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The effective date of the quit was December 26, 2018. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/rvs