

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROGELIO H LOZANO
Claimant

APPEAL 21A-UI-15950-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD TRIUMPH FOODS LLC
Employer

**OC: 04/18/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 14, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2021. The claimant, Rogelio H. Lozano, participated personally. Employer Seaboard Triumph Foods, LLC participated through human resources supervisor Christina Scott. The administrative law judge took official notice of the administrative record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?
Is the claimant able to and available for work?

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 shipping laborer from October 12, 2020, and was separated from employment on January 4, 2021.

Employer has a policy in place which requires employees to call in if they are not going to be at work. There is also a policy in place which states that if employees are a no-call/no-show for two consecutive work days, they are considered to have abandoned their jobs and are separated from employment. Claimant was aware of the policy.

The last day claimant worked was November 12, 2020. He became ill and was diagnosed with COVID-19. He developed complications from COVID-19 and missed several weeks of work. Claimant received a doctor's note on December 9, 2020, indicating he needed to remain off of work but this note was not provided to employer. Claimant reported his absences each day until the end of December. According to employer claimant was absent from work without notifying

them on December 30 and 31, 2020, and January 2 and 4, 2021. Continuing work was available for claimant and his job was not in jeopardy.

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 the following dates: December 30 and 31, 2020 and January 2 and 4, 2021. 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 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 § 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 § 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:

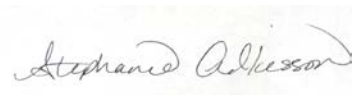
- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Claimant testified that he had doctor's notes excusing his absences, but when he contacted employer he was told he did not need to supply them. However, claimant was required to report his absences each day and while he reported his absences for a period of time, he eventually ceased doing so. An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer.

Because claimant's separation is disqualifying, the issue of whether claimant is able to and available for work is moot.

DECISION:

The July 14, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the 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. The issue of whether claimant is able to and available for work is moot.



Stephanie Adkisson
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September 15, 2021
Decision Dated and Mailed

sa/scn