

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TONY M MAYO
Claimant

IRON SPECIALITIES INC
Employer

APPEAL 14A-UI-12187-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/02/14
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the November 20, 2014, (reference 04) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 15, 2014. Claimant participated. Employer participated through office manager, Katrina Sonntag and company owner, Mark O'Brien.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a laborer on metal building erection crew from August 7, 2014, and was separated from employment on October 29, 2014, when he quit the employment. His last day of work was October 24, 2014. He was a no-call/no-show on scheduled work days October 27, 28, and 29. He did not respond to text messages and/or knocks on the door from foreman Jason O'Brien (son of Mark O'Brien) and/or laborer/coworker Jon Hart when they stopped by his house to pick him up for work. (Employer's Exhibits 2 through 4, 6 and 7) The employer's policy provides that no-call/no-show absences for three consecutive workdays is considered a voluntarily quitting of employment. (Employer's Exhibit 1, page 2) The employer had not specifically warned claimant his job was in jeopardy but did tell him he should not miss or be late for work again due to drinking and oversleeping. (Employer's Exhibit 5) He did not return the text messages, answer the door, or otherwise communicate with them because he thought he was fired. Continued employment was available had he reported for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). 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 work days in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Since claimant did not provide credible rebuttal evidence to the employer's records of his failure to properly report his absences or any excusable reason for three consecutive work days or follow up with his foreman or the owner, and his assumption of having been fired was erroneous, the failure to continue reporting to work or communicate with the employer was an abandonment of the job. Benefits are denied.

DECISION:

The November 20, 2014, (reference 04) unemployment insurance decision is reversed. Claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Since no benefits were paid for weeks claimed, no overpayment is established.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css