

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CLARENCE TEJAN**  
Claimant

**PACKERS SANITATION SERVICES INC**  
Employer

**APPEAL 16A-UI-04908-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/15**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 27, 2016, (reference 04) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on May 11, 2016. The claimant, Clarence Tejan, participated. The employer, Packers Sanitation Services, Inc., participated through Cesar Barrios Garcia, the site manager. Claimant's Exhibit A was received and admitted into the record without objection. During the hearing, the administrative law judge took official notice of the administrative record and claimant's wage history for purposes of determining claimant's final date of employment.

**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 cleaner from June 29, 2015, until this employment ended on March 8, 2016, when he voluntarily left his employment.

Claimant last reported to work on February 2, 2016. He called Garcia several days later and reported that he would be absent for several days due to personal problems. Garcia reminded claimant that it was important that he come to work, particularly as he had recently been promoted. Garcia also told claimant that he needed to come to work as scheduled or provide documentation explaining why he needed to be absent.

Garcia heard from claimant next in late February 2016. Claimant called and said he wanted to come back to work. Garcia and claimant had a meeting in the office, and Garcia agreed to allow claimant to return to work. He was scheduled to return on February 27, 2016. Claimant did not show up for this shift, and Garcia did not hear anything from him explaining his absence. Therefore, on March 8, Garcia decided to submit claimant's discharge paperwork to the corporate office.

Claimant contends his employment ended in April, after Garcia refused to allow him to return from having back surgery. Garcia denies that claimant reported he was having back surgery. He testified that the employer has FMLA available and he would have referred claimant to corporate to pursue FMLA protection, had claimant reported a medical issue. Garcia also testified that the employer maintains a three-day no-call/no-show policy. Claimant received a copy of the employee handbook, which contains both information about FMLA and the three-day no-call/no-show policy.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are withheld.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After considering the testimony provided by both parties, the administrative law judge finds the employer provided a more credible version of events that led to claimant's separation from employment. Even if claimant had back surgery in April and attempted to return to work at that time, the administrative law judge finds claimant had stopped showing up to work several months earlier. Garcia's testimony was detailed in terms of dates and locations of the conversations he had with claimant, and the level of detail he recalled made his testimony more credible than claimant's.

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.

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. It appears that all the conversations claimant and Garcia had after early February 2016 were merely discussions about claimant being re-hired and resuming his employment. Claimant's employment ended in early February, after he notified Garcia he was having personal problems and then failed to return to work for numerous scheduled shifts.

**DECISION:**

The April 27, 2016, (reference 04) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the 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.

---

Elizabeth Johnson  
Administrative Law Judge

---

Decision Dated and Mailed

lj/css