

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building, 4<sup>TH</sup> Floor  
Des Moines, Iowa 50319  
eab.iowa.gov**

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**LESTER G FRANKE**

Claimant

and

**A-1 POOLS LLC**

Employer

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**HEARING NUMBER: 22B-UI-24128**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-2 96.-5-1

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Lester Franke, worked for A-1 Pools, LLC, from June 1, 2021 through July 24, 2021 as a full-time general laborer. The Claimant's workday generally began at 7:00 a.m. Hours varied, i.e., an employee could potentially work eleven- to twelve-hour days. The Claimant had the option of starting his time at the office or starting at the jobsite. The Employer relies on employees' use of cell phones to clock in and out by texting their hours to the Employer at the end of each day. The Employer then cross-checks these hours with job tickets for verification. The Claimant had no cell phone, so he was allowed to turn in his time with the text of his co-worker, along with the co-worker's hours. The Claimant sometimes had his girlfriend keep hand-written notes on his work hours.

The Claimant's hours were not always accurately reported. He didn't report to work as scheduled from June 3<sup>rd</sup> through the 7<sup>th</sup>, and then again from June 9<sup>th</sup> through the 12<sup>th</sup>. The Claimant indicated he had been in Arkansas with his ailing father. Whenever the Claimant questioned his hours, he and the Employer would figure out if, and why there may have been a discrepancy. On June 29<sup>th</sup>, the Claimant complained to the Employer that his paycheck was short. However, the Claimant previously received an advance of \$100, which had been reflected on his June 4<sup>th</sup> paycheck. The Claimant also received an advance of \$100 taken from his July 2<sup>nd</sup> paycheck. In response to his complaint, the Employer gave the Claimant paper and pen and directed him to keep track of his own hours, which the Claimant complied. On June 30, the Claimant did not turn in his hours, but he was paid based on Jacobs Sheridan's recording of his hours worked.

The Claimant quit reporting to work beginning July 8<sup>th</sup>, as he was in Arkansas with his father. When he returned on July 23<sup>rd</sup>, he again complained that the Employer shorted his paycheck. When he and the Employer could not agree on his complaint, the Claimant told the Employer that he would never work for him again and quit.

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

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 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...

871 IAC 24.26(4) provides a quit with good cause attributable to the employer when, "The claimant left due to intolerable or detrimental working conditions."

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).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The record establishes the Claimant understood and complied with the Employer's method of time-keeping by allowing his immediate supervisor, or other co-worker, to text his hours to the Employer at the end of each working day. Although the parties dispute some of the accuracy

of those hours, the Employer provided a detailed accounting of each of the days the Claimant worked, or didn't work, based on their records. The Claimant, on the other hand, was unable to provide sufficient evidence to overcome the Employer's testimony. In addition, the Claimant did not refute his long absences, or the fact that he received two \$100 advances that could conceivably have accounted for what he believed were shortages on his paychecks.

While we can understand why the Claimant would not want to remain with a company he felt unfairly compensated him, the Claimant has failed to establish that his belief he was underpaid due to this Employer, and constituted detrimental and intolerable working conditions. Rather, the record supports the Claimant's less-than-expected paycheck amounts were due to his own ill reported absences and advances, which resulted in less pay for that particular time period. Based on this record, we conclude the Claimant failed to satisfy his burden of proof.

**DECISION:**

The administrative law judge's decision dated January 24, 2022 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit without good cause attributable to the Employer. Accordingly, he is denied benefits until such time he has worked in and was paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(1) "g".

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

AMG/fnv