

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEOBARDO SEDANO DIAZ
Claimant

APPEAL 21A-UI-02493-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE PRIDE EGG FARM LLP
Employer

OC: 08/02/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 22, 2020, (reference 01) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged for failing to report to work for three days in a row and not notifying employer. The parties were properly notified of the hearing. A telephone hearing was held on March 5, 2021. The claimant Leobardo Sedano Diaz participated through a Spanish interpreter with CTS Language Link. The employer Hawkeye Pride Egg Farm, LLP did participate through human resources manager Jamie Quiring. Employer's Exhibits 1-3 were admitted into the record.

ISSUE:

Whether claimant's separation was a voluntary quit without 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 barn supervisor from July 9, 2020 until this employment ended on July 22, 2020 when he was discharged.

Employer has a policy in place wherein if an employee fails to report an absence for three consecutive working days they are considered to have voluntarily quit their employment. The policy is contained in the employee handbook. Claimant received a copy of the handbook.

Claimant was absent from work on July 20, 2020, and did not call his supervisor to report his absence. Claimant was absent again on July 21 and 22, 2020 and did not report his absences. Employer considered claimant to have voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit his employment without good cause attributable to employer. Benefits are denied.

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).

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her

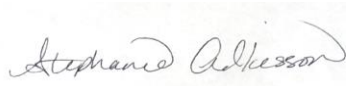
own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

In this case claimant was absent from work on the following dates: July 20, 21, 22, 23, and 24, 2020. Claimant knew that he was supposed to report any absences prior to her scheduled shift start time. Claimant failed to report these absences in violation of the employer's policy. Claimant testified he told his supervisor that he was going through a divorce and his supervisor told him to take off as much time as he needed. Even if claimant's supervisor had granted him time off, without an end date given, claimant would have to report each day. Had claimant reported the absence each day, his supervisor would not have considered him a voluntary quit on July 22, 2020.

Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The December 22, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. 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.



Stephanie Adkisson
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March 11, 2021
Decision Dated and Mailed

sa/lj