IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

DONALD BROWN
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO: 11A-UI-14777-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10-09-11
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 8, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 6, 2012 and continued on February 2, 2012. The claimant participated in the hearing with Attorney Mary Hamilton. Will Sager, Complex Human Resources Manager; Jan Severson, Human Resources Clerk; Lonny Jepsen, Director of Human Resources at the Corporate Office; and Renea Kestel, Complex Nurse Manager; participated in the hearing on behalf of the employer. Claimant's Exhibits A through E were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Tyson Fresh Meats from May 20, 2008 to October 13, 2011. The employer's attendance policy is a no fault policy and allows employees to accumulate 16 points before termination occurs unless the employee is on Family and Medical Leave (FML) or has another reason that results in an excused absence. The claimant was on FML from September 29 through October 5, 2011, and was expected to return to work October 6, 2011. At that time he had nine attendance points. He called in and reported he was ill October 6, 2011, and was assessed one attendance point. He was a no-call no-show October 7, 8, 10, 11 and 12, 2011, because he was experiencing stress and high blood pressure and received three points for each absence which placed him over the point limit. On October 13, 2011, he went in to talk to the employer about his point total and asked for and received a copy of the employee calendar listing his attendance points from Human Resources Clerk Jan Severson. When employees call in to report their absences they speak to their supervisor who completes an attendance report and sends it to a human resources clerk who enters it into the attendance system which keeps track of an employee's point total. When the claimant went in to the employer October 13, 2011, Ms. Severson gave him a copy of his point total showing 20 points and the automated system indicated the claimant was terminated

(Claimant's Exhibit E). The automated attendance system makes the termination designation solely based on the point totals. The employer does not input that information, besides entering the point totals as they are called in, and the claimant assumed he was terminated based on the employee calendar, without speaking to the employer. The claimant handed Ms. Severson his identification badge and when she asked him why he was giving her his badge he stated he did not work there anymore. The claimant was upset and when Ms. Severson asked if he turned his equipment into the knife room he told her the employer knew where his locker was and because he did not have his check yet he was not going to clear out his locker and he was not going to work for free. Ms. Severson asked him if that was why he was leaving and he stated yes and also due to his health problems from working for the employer. Ms. Severson was not aware the employee calendar stated the claimant was terminated and would have referred the claimant to management had she understood that was why he stated he was leaving. He was upset when he left and Ms. Severson immediately reported the conversation to Director of Human Resources at the Corporate Office, Lonny Jepsen, who happened to be in an adjoining office that day. Ms. Severson told Mr. Jepsen he should talk to the claimant and Mr. Jepsen tried to catch up with the claimant. The claimant was entering the parking lot from security when Mr. Jepsen yelled for him to stop four or five times and said, "Let's talk about this" just before the claimant waved his hand and continued walking away. After the automated attendance system assesses points and determines an employee has exceeded the allowed number of attendance points the employer meets with the claimant to determine if there are any extenuating situations that might result in the employer excusing the claimant's absences. When the claimant did not call in to report his absence or show up for work October 7, 2011, the employer sent him a letter with FML paperwork stating because he had been on a medical leave of absence since September 30, 2011, and was scheduled to return to work October 7, 2011, he needed to provide updated medical information within 15 days of his receipt of the certified letter or the employer would consider the claimant to have voluntarily quit his employment. Typically three no-call no-shows result in the employee be considered to have voluntarily quit but because the employer was aware the claimant had been on a medical leave it thought it was possible he had more paperwork to extend his leave of absence but the claimant failed to provide such paperwork within 15 days of receipt of the letter. The claimant had been treated for high blood pressure and work-related stress and his physician suggested he look for other work but did not provide that information as a doctor's order or in writing.

REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 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.

While the claimant maintains his employment was terminated, the evidence establishes the claimant voluntarily quit his job by failing to return from a leave of absence, accumulating five no-call no-shows October 7, 8, 10, 11 and 12, 2011, telling Ms. Severson he was leaving and failing to stop and speak to Mr. Jepsen when he learned what happened, tried to catch up with the claimant and get his attention four or five times and then waved Mr. Jepsen off when he asked the claimant to come back to discuss the situation. The claimant simply accepted a word on the employee calendar rather than speaking to the employer about his health issues and explaining his situation to the employer.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Generally notice of an intent to quit is required by Cobb v. Employment Appeal Board, 506 N.W.2d 445, 447-78 (Iowa 1993), Suluki v. Employment Appeal Board, 503 N.W.2d 402, 405 (Iowa 1993), and Swanson v. Employment Appeal Board, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent to quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent to quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. The Iowa Supreme Court recently concluded that, because the intent to quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions but is required when the reason for leaving is work related health issues. Hy-Vee, Inc. v. Employment Appeal Bd., 710 N.W.2d 1 (Iowa 2005).

Inasmuch as the claimant failed to report for work or notify the employer for three consecutive work days in violation of the employer's policy, or that he was not returning to work due to related health concerns and did not provide a doctor's statement that he needed to quit his employment due to health reasons, he is considered to have voluntarily left his employment without good cause attributable to the employer. Therefore, benefits must be denied.

DECISION:

The November 8, 2011, reference 01, decision is affirmed. The claimant voluntarily left his 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.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/pjs