

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FABIAN SANCHEZ
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 16A-UI-11642-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/18/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 21, 2016 (reference 02) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on November 10, 2016. The claimant, Fabian Sanchez, participated personally and with interpretation services provided by CTS Language Link. The employer, Tyson Fresh Meats Inc., participated through witness Will Sager. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker. He worked Monday through Friday each week from 6:00 a.m. to 3:00 p.m. and on Saturdays as needed. He began working for this employer on January 31, 2006 and his last day physically worked on the job was August 23, 2016. His job duties included working on the production line. This employer runs a manufacturing plant.

The employer has a written policy in place wherein if an employee fails to report an absence for three consecutive working days and they have accumulated over ten attendance points, they are considered to have voluntarily quit their employment. This policy was given to claimant when he was first hired. Claimant was absent from August 24, 2016 through September 9, 2016. Claimant was absent due to a non-work related illness.

The employer also has a policy in place wherein employees call in to report that they will be absent from their scheduled shift prior to the beginning of their shift. Claimant was aware of this policy. Claimant called and reported his absences due to illness from August 24, 2016 until September 6, 2016.

On September 6, 2016; September 7, 2016; and September 8, 2016 claimant did not call in nor show up for work. By this time, claimant had accumulated more than 10 attendance points. Because he failed to call in or show up for work for three consecutive work days, he was considered to have voluntarily quit under the employer's written policy. There was continuing work available if claimant had not voluntarily quit his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The decision in this case rests, at least in part, upon the credibility of the parties. 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.* The administrative law judge concludes that Mr. Sager's testimony is more credible than the claimant's testimony.

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).

In this case claimant was a no-call no-show for three consecutive work days in violation of the employer's policy. Claimant knew that he was supposed to report any absences prior to his scheduled shift start time as he had done so in the past. Claimant failed to do so. This evidenced his intent to voluntarily quit his employment.

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.

As such, this case must be analyzed as a voluntary quit case and not a discharge case. 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 (Ia. Dist. Ct. App. 1973).

In this case, claimant believed that he did not have to call and report his absences due to illness. This belief was not reasonable given the fact that he knew about the employer's written policy regarding notification of absences.

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 October 21, 2016 (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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