

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RANDY ROBERTS
Claimant

OSI INDUSTRIES
Employer

APPEAL NO. 18A-UI-01368-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/31/17
Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 24, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 23, 2018. Claimant participated. Employer participated by Ann Vorthmann. Employer's Exhibits 1-4 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 31, 2017. After that date claimant was off from work with various medical problems. Claimant had initially filled out FMLA paperwork and had said paperwork completed by his doctor, but said doctor stated that claimant was to return to work on September 25, 2017. Claimant did not return to work on that date and did not have additional FMLA paperwork completed.

Employer attempted to get claimant to fill out proper documentation for his ongoing illnesses, without success. Claimant called in every day to report his absences on a recording. He did not have an active address or ability to receive phone calls from his employer. Employer did get in touch with claimant on October 20, 2017. At that time, claimant was told to come into work the next Monday or bring in documentation from his doctor regarding his ongoing absences. Claimant did neither, but did call in sick to work that day. Claimant continued to call in sick for the next month after this date had passed, and then stopped calling in at all. After claimant had been a no-call/no-show for three consecutive days of work, employer saw this as a voluntary quit effective November 29, 2017.

Employer stated that throughout November they attempted to reach claimant by phone and by mail, but certified letters were returned as undeliverable and claimant had no mechanism for leaving phone messages.

Claimant stated that he considered himself terminated as of October 23, 2017 and didn't know why he kept calling into work for the next month.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 section 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 section 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.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he stopped calling in sick and didn't get documentation to support his ongoing absences.

Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* Here, claimant continued to call in to work for a month to report his sickness after he allegedly thought he'd been terminated. This indicates claimant still thought he was employed. Only when he didn't contact employer for an extended period did employer determine that claimant had quit. Such determination was reasonable considering the facts of the incident.

DECISION:

The decision of the representative dated January 24, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn