

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA J HENDON
Claimant

PANAMA TRANSFER INC
Employer

APPEAL 16A-UI-08268-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/10/16
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 filed an appeal from the July 26, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on August 16, 2016. The claimant Joshua Hendon participated and testified. The employer Panama Transfer Inc. participated through Safety Director Josh Schmitz.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a dock worker from September 26, 2012, until this employment ended on June 29, 2016, when he voluntarily quit.

On June 22, 2016, while claimant was working, one of his coworkers became upset and shoved a broom in claimant's direction. Claimant indicated to their immediate supervisor, Jake Hendrickson, that he did not think this behavior was appropriate and did not want to work with this individual any longer. Still upset about the incident and not wanting to work with this coworker, claimant called in on June 23, 2016. Claimant did not go to work again on June 24, 2016, but did not call in to report he would be absent. Claimant went to work as scheduled on June 26, 2016. On this day claimant spoke to supervisor Matt Smith about the situation and told Smith he was not going to work again until a meeting was held regarding the June 22 incident. Smith agreed to hold a meeting. Claimant was a no-call/no-show again on June 27, but believed Smith understood he was not going to be at work until a meeting was held, which had not been done at this point.

A meeting was originally scheduled for June 27, but claimant did not attend the meeting. Claimant testified he did not attend the meeting because he was never told what time it was to occur. On the evening of June 27, Smith called claimant and told him that he was being suspended for three days due to his no-call/no-shows. Claimant testified Smith told him that he would be terminated following his suspension. A meeting was set for June 28, 2016 at 2:30 p.m. to discuss the June 22 incident. Claimant missed this meeting because he overslept. When claimant woke up he tried to call Smith, but got his voicemail. Claimant did not leave a message, but assumed he had been terminated. Claimant made no further attempts to contact the employer until approximately a week later when he called to ask about being rehired for a day shift position. Schmitz testified he was part of the decision making process that concluded claimant would be suspended for three days and would only be discharged if there were further no-call/no-shows. According to Schmitz, the decision to separate claimant from employment was only made after he missed the June 28 meeting and failed to contact the employer or report to work again.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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 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). 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). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Claimant stopped going to work after June 26, 2016, because he assumed he had been terminated. Since claimant did not follow up with management personnel or the owner, and his assumption of having been fired was erroneous, the failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The July 26, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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