

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN P HARKER
Claimant

TYSON PET PRODUCTS INC
Employer

APPEAL 14A-UI-13359-H2T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/30/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 15, 2014 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 13, 2014. Claimant participated. Employer did not participate. Employer's Exhibit One was entered and received into the record.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the 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 team lead beginning December 13, 2013 through November 11, 2014 when he voluntarily quit.

The claimant was put on a last chance agreement for poor attendance on October 28, 2014 and was told that any additional absences would lead to his discharge. The claimant was absent due to illness and injury on November 3, 4, and 5. He properly reported his absences. Thereafter, he was a no-call/no-show for work because he assumed he would be discharged for missing the three days prior. Before he stopped reporting his absences the claimant never called to speak to a manager to explain his situation or to obtain further guidance. The claimant knew that if he was going to miss work he was obligated to call in to report his absences to his employer. He did not do so for November 6, 7, 8, 9, and 10.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left the 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.

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.

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. Since claimant did not follow up with management personnel to check on the status of his employment, claimant's failure to continue reporting to work was an abandonment of his job. Benefits are denied.

DECISION:

The December 15, 2014 (reference 01) decision is affirmed. The claimant voluntarily left 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/can