

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN SILBERSTEIN
Claimant

APPEAL NO: 14A-UI-06899-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AG PARTNERS LLC
Employer

OC: 06/01/14
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 24, 2014, 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 July 28, 2014. The claimant participated in the hearing. Fred Grein, Location Leader and Dan DeJong, Vice-President of Operations, participated in the hearing on behalf of the employer.

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 plant operator for Ag Partners from March 24, 2014 to May 28, 2014. The employer considered him to have voluntarily quit his job after he accumulated three consecutive no-call no-show absences.

The claimant was absent April 30, 2014, because he did not have childcare. He overslept May 12, 2014, and stayed home after telling the employer he was also trying to find childcare but he would be in later that day. Around 3:30 p.m. that day, Location Leader Fred Grein texted the claimant and indicated they should talk the following morning, May 13, 2014. The claimant was experiencing a flare up of a chronic medical condition beginning approximately May 13, 2014. The claimant did not report to work after that day but stated to the employer he had doctor's notes covering his absences. He and Mr. Grein communicated extensively through text messages and Mr. Grein was sympathetic to the claimant being absent due to illness but did tell him May 15, 2014, he would need to provide a doctor's release before he could return to work. On May 16, 2014, the claimant texted Mr. Grein his doctor was allowing him to return to work May 19, 2014, but the claimant was a no-call no-show May 19, 2014. The claimant contacted Mr. Grein May 20, 2014, and was again told he needed a note from his doctor stating he was under a doctor's care. The claimant texted Mr. Grein that he was seeing his doctor that day and she would write a letter for the employer and the claimant would have it to the employer by 5:00 p.m. At 4:08 p.m. the claimant called Mr. Grein and stated his wife was bringing the notes

to the employer and would be there shortly but she never showed up. On May 21, 2014, the claimant brought in two doctor's notes. One note was dated May 16, 2014, and released the claimant to return to work that day and another note dated May 20, 2014, released the claimant to return to work May 22, 2014. Later that afternoon, the claimant sent a text message to Mr. Grein asking how he could get a transfer and complaining about his trainer. Mr. Grein responded he had a form the claimant could fill out for a transfer. The claimant replied by explaining his issues with his trainer. On May 22, 2014, the claimant texted Mr. Grein at 5:54 a.m. and stated his doctor did not want him to return until May 26, 2014. The claimant was then a no-call no-show May 23, May 27, May 28 and May 29, 2014, and the employer determined he voluntarily quit his job.

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.

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.

While the claimant does suffer from a chronic medical condition, that does not relieve him of his responsibility to call or text the employer to notify it of his absences each day he is going to be gone. 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, he is considered to have voluntarily left his employment without good cause attributable to the employer. Therefore, benefits are denied.

DECISION:

The June 24, 2014, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs