

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL D LEWIS
Claimant

SHEARERS FOODS BURLINGTON LLC
Employer

APPEAL 17A-UI-10350-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/25/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 9, 2017, (reference 02) unemployment insurance decision that denied benefits based on his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on October 26, 2017. The claimant participated and testified. The employer did not participate.

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 packer from September 2016, until this employment ended on September 20, 2017, when he voluntarily quit.

On September 20, 2017, claimant became ill while he was at work and asked to go home early. Claimant was given permission to leave. Approximately three weeks prior, the employer had informed claimant of a decision to discharge him from employment based on his attendance after he accumulated eight and a half attendance points. Claimant spoke to human resources about his situation and it was agreed his points would be dropped down to seven and a half points and he would be given a second chance. Claimant was advised if he received one more point, he would be discharged. Claimant believed leaving early on September 20 would cause him to accumulate one more attendance point and he would be discharged. Based on this belief, claimant did not return to work again after September 20. Claimant was never told by any member of management that he had been discharged and did not make any attempts to confirm his assumption of termination with the employer.

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 reporting to work after September 20, 2017 because he assumed he had been discharged from employment. Since claimant did not follow up with management personnel and confirm that his assumption was correct, the decision to leave work and failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The October 9, 2017, (reference 02) 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

nm/rvs