

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAMERON LYONS
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 20A-UI-04961-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant Cameron Lyons filed an appeal from a May 22, 2020 (reference 01) unemployment insurance decision that denied benefits based on a disqualifying reason. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for June 23, 2020 at 10:00 a.m. At the time of the hearing Lyons appeared and testified. Christy Chappelear appeared and testified on behalf of Tyson Fresh Meats Inc. ("Tyson"). I took administrative notice of Lyon's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Was the Claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Lyons commenced his employment with Tyson in Council Bluffs on October 28, 2019, as a machine operator in the pork department. Lyons worked full-time on the second shift.

Lyons received information a warrant had been issued for his arrest. He told his supervisor he would likely be arrested. Lyons was arrested on March 12, 2020 in Omaha.

Chappelear is the human resources manager for Tyson and testified Lyons was a no call, no show at Tyson on March 12, 2020, March 13, 2020, and March 16, 2020. Chappelear reported Lyons last worked for Tyson on March 11, 2020. Tyson considered Lyons had abandoned his job. Chappelear pulled the inmate list for Douglas County, Nebraska and confirmed Lyons was incarcerated on March 16, 2020. On March 16, 2020, Chappelear sent Lyons a letter indicating Tyson considered he abandoned his job by not attending work or calling Tyson for three days. Lyons had not missed any work for Tyson before his arrest and incarceration.

Lyons received Chappellear's letter and mailed a copy of her letter to Tyson with a response stating he had been incarcerated and he should not have lost his job. Lyons sent a copy of Chappellear's letter with his response to Tyson on March 24, 2020, March 27, 2020, and March 28, 2020.

Chappellear testified Lyons attended a five-day orientation at the start of his employment with Tyson. Lyons received a copy of the attendance policy. The attendance policy provides that if an employee fails to come to work or call in three days in a row, the employee will be terminated. Lyons signed off on the attendance policy on October 31, 2019. Lyons acknowledged he was aware of the attendance policy.

Lyons testified when he arrived at jail he was afforded one telephone call and that he called the Tyson plant. Lyons reported he spoke with a woman and told her he was going to be absent. Lyons did not recall the name of the woman he spoke with. He did not provide any records from the jail documenting the call.

Chappellear testified each Tyson employee receives an employee identification card with an employee number. If the employee is going to be absent, the employee calls an automated 1-800 number listed on the back of the card. The number is toll-free. When calling the number, the employee can select a reason why the employee will not be reporting to work that day, and the employee can select whether the employee will report to work late or whether the employee will be absent for the whole shift. The system provides the employee with a confirmation number for the call. After the employee makes the relevant selections in the automated system, the employee's immediate supervisor and the human resources department receive an e-mail confirmation of the call with the confirmation number, noting the reason why the employee is not coming to work, and noting whether the employee will report to work late or be absent for the whole shift. If an employee fails to write down the confirmation number, Tyson's corporate office can pull the call log.

Chappellear testified Lyons did not call on March 12, 2020 to report he was going to be absent. The call log does not show Lyons called that day. She also reported during orientation each employee is given the card, instructed on how to report absences, and practices using the card. Lyons acknowledged he had been instructed on how to use the card.

Lyons testified when he was arrested on March 12, 2020, the authorities did not allow him to take his wallet and he did not have the card. Lyons insists he called Tyson that morning to report he was going to be absent. Lyons acknowledged he did not call Tyson to report he was going to be absent on March 13, 2020 or March 16, 2020.

The conflicting testimony from Chappellear and Lyons raises an issue of credibility. During the hearing I assessed the credibility of Chappellear and Lyons by considering whether their testimony was reasonable and consistent with other evidence I believe, whether they had made inconsistent statements, and their "appearance, conduct, memory and knowledge of the facts," and his interest in the case. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Lyons has an obvious outcome in the case. He wants to collect unemployment insurance benefits. Chappellear also has an interest in the case because she works for Tyson. I do not find Lyons's testimony reasonable and consistent with the other evidence I believe. When I asked Lyons what number he called, he stated a lady at the jail looked up and called the number. Lyons could not recall who he spoke with. Lyons was familiar with the policy for reporting an absence. He did not receive a confirmation number or other verification. Tyson maintains an automated system for employees to report absences. Chappellear testified if someone had called to report an absence, Tyson staff

are aware of the system. Lyons also testified he could not call a toll free number from the jail. I do not find his testimony reasonable and consistent with the other evidence I believe.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. *Id.* 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1) provides an individual “shall be disqualified for benefits, regardless of the source of the individual’s wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.” The Iowa Supreme Court has held a “voluntary quit” means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “Good cause” for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant’s departure from employment was voluntary. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code 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:

24.25(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Lyons did not report to Tyson on March 12, 13, and 16, 2020, when he was incarcerated in Nebraska. Based on my finding Lyons did not show up for work or call into to work for three days, I find Lyons was not discharged, but rather voluntarily quit his position with Tyson. Under Tyson’s attendance policy, if an employee engages in three no calls, no shows, Tyson considers the employee has abandoned his or her job and voluntarily quit. Lyons acknowledged he received the policy. He also received an employee identification card with instructions for reporting absences using a toll free number. Lyons did not use the reporting system for reporting his

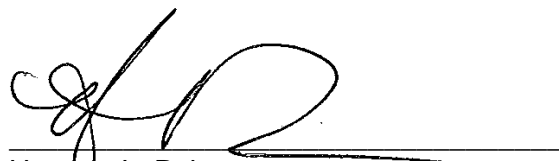
absences while he was in jail. As discussed above, I do not find his testimony he called Tyson to report his absence on March 12, 2020, credible. The decision denying benefits is affirmed.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, the claimant may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"). The Pandemic Unemployment Assistance ("PUA") section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance ("PUA"). **You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at** <https://www.iowaworkforcedevelopment.gov/pua-information>. This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The May 22, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is affirmed. The claimant voluntarily quit his employment without good cause attributable to the employer by failing to show up for work or to call for work three days in violation of a company rule. Unemployment insurance benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Heather L. Palmer
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July 1, 2020
Decision Dated and Mailed

hlp/scn