

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BARRY TILLOTSON
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-16462-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/06/20
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/appellant filed an appeal from the July 16, 2021 (reference 02) unemployment insurance decision that denied benefits based upon claimant's voluntary quit from employment for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on October 5, 2021. The claimant, Barry Tillotson, participated personally. The employer, Hy-Vee Inc., participated through hearing representative Frankie Patterson and witness Antonio Romeo. Employer's Exhibits 1-15 were admitted. Claimant's exhibits 1-7 were admitted. Claimant updated his mailing address.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to 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 meat clerk. He was employed from April 2020 until April 19, 2021. Antonio Romeo was claimant's immediate supervisor.

The employer has an attendance policy stating that claimant must call into to work at least one hour prior to shift start time if the claimant was going to be late.

Claimant had received written warnings regarding his attendance and failure to adhere to the policy requiring him to properly report his absences. The most recent warning prior to the final incident occurred on April 19, 2021. Claimant was written up for being 35 minutes late on Sunday April 18, 2021. At that time, claimant had been written up three times for excessive tardiness. In this warning, it was made clear that claimant's job was in jeopardy and if he is more than 5 minutes late again, he will be terminated. Claimant acknowledged his receipt of this April 19, 2021 warning with his signature and date.

On April 22, 2021, claimant was to report to work. Claimant was unable to work because he was sick but claimant did not call in to notify the employer that he would not be at work due to illness.

On April 24, 2021, April 25, 2021 and April 27, 2021, claimant was scheduled to work. Claimant did not report to work. Claimant did not report his inability to work. Claimant believed he had been terminated on April 22, 2021 when he did not report to work or call in to work. Claimant made no further contacts with his employer. He did not report to any further scheduled work shifts.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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.

In this case, claimant had an intention to quit and carried out that intention by failing to come to work for any further scheduled shifts. Claimant believed he had been terminated for failure to report to work and call in to work, however, claimant did not report to work for any further

scheduled shifts or make contact with his employer in any way after failing to report to work on April 22, 2021.

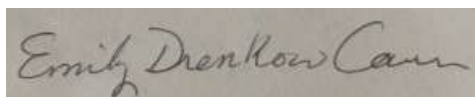
It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony to be more credible than the claimant's testimony.

Claimant would not know if he had been terminated unless he communicated with his employer or reported to work his scheduled shift. Claimant's belief that he had been discharged was erroneous. Claimant did not report to work after April 22, 2021. Therefore, claimant's separation is considered a voluntary quit without good cause attributable to employer. Claimant has not met his burden of proving that he voluntarily quit for good cause attributable to employer. Therefore, claimant is not eligible for unemployment insurance benefits.

DECISION:

The July 16, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily quit without good cause attributable to the employer. Benefits are withheld in regards to this employer until such time as he is deemed eligible.



Emily Drenkow Carr
Administrative Law Judge

October 6, 2021
Decision Dated and Mailed

ed/kmj