

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS BRALLIER
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 18A-UI-02443-JP

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 15, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held on May 16, 2018 at 3420 University Avenue, Suite A, in Waterloo, Iowa. Claimant participated. Attorney Paul Demro participated on claimant's behalf. Employer participated through administrative human resources associate Katherine Schoepske.

ISSUE:

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 production employee from May 10, 1991, and was separated from employment on January 12, 2018.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies. If employees provide a doctor's note, the employer will excuse the absence and the employee will not receive any attendance points. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving ten points in a rolling twelve month period. The employer requires employees contact the employer's call-in line and report their absence at least thirty minutes prior to the start of their shift. The employer has a no-call/no-show policy that provides if an employee has five consecutive no-call/no-shows, it is considered a voluntary quit (job abandonment). Claimant was aware of the employer's policy.

On January 3, 2018, claimant called off work due to transportation issues. When claimant called the employer, he spoke to an employee in the personnel department. Claimant inquired about his job status. Claimant was aware his job was in jeopardy because he had more than ten attendance points. The employee did not tell claimant he was discharged. Claimant assumed he was fired because of his attendance points. The employee instructed claimant to talk to a superintendent ("green hat"). Claimant did not speak to a superintendent after he

spoke to the employee in the personnel department. Claimant did not come in because he assumed he was fired. Claimant did not contact the employer after January 3, 2018.

The final incidents that led to claimant's separation occurred when claimant was a no-call/no-show for his scheduled shifts on January 4, 5, 6, 9, 10, 11, and 12, 2018. Claimant did not contact the employer on January 4, 5, 6, 9, 10, 11, and 12, 2018. Ms. Schoepske is not aware if the employer attempted to call claimant on January 4, 5, 6, 9, 10, 11, and 12, 2018.

Claimant was last warned on December 21, 2017 due to absenteeism. As of December 21, 2017, claimant was at six attendance points. Claimant was also issued a written warning for his attendance infractions on January 29, 2017. A majority of claimant's absences were due to illness.

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. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit that was admitted into evidence. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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). 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. On January 3, 2018, claimant called the employer to report he was going to be absent due to transportation issues. During the phone call, claimant inquired about his job status. The employer instructed claimant that he had to come in and speak to a superintendent ("green hat"). Claimant failed to return to the employer to speak to a superintendent because he assumed he had been discharged for absenteeism; however, no one from the employer told claimant he was discharged. Claimant did not contact the employer after January 3, 2018. Claimant was then a no-call/no-show for his next scheduled shifts on: January 4, 5, 6, 9, 10, 11, and 12, 2018. After claimant was a no-call/no-show on January 12, 2018, the employer reasonably assumed he was no longer returning to work.

Inasmuch as claimant failed to report for work or notify the employer for seven workdays, he is considered to have voluntarily left employment without good cause attributable to the employer. 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). Since claimant did not follow up with management personnel and his assumption of having been fired was erroneous, his failure to continue reporting to work was an abandonment of the job. While claimant's leaving

the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The February 15, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs