

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MITCHELL H HALVERSON
Claimant

APPEAL 16A-UI-05248-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI START MEAT & POULTRY LLC
Employer

**OC: 04/10/16
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 28, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on May 20, 2016. The claimant participated personally. The employer participated through Laura Roney, the payroll administrator/human resources. Claimant Exhibit A was entered. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant quit the employment with good cause attributable to the employer, or was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as an electrician and was separated from employment on March 17, 2016.

The employer has a policy which provides an employee will be separated from work due to job abandonment after three consecutive days of no-call/no-show. The employer's call-in policy requires employees to notify the employer by way of the provided phone number of an intended absence, at least one hour prior to the start of their shift. In addition, departments may have additional call-in policies such as notifying a manager via text message, but internal policies do not replace or supersede the established employer policies. The claimant was made aware of the employer's policies upon hire. The claimant was also issued warnings for attendance on January 22, February 8, and received a one-day suspension on March 1, 2016.

The claimant asserted he discontinued work due to safety concerns associated with his management team. Specifically he stated that he believed his team operated dangerously and

cited to an instance in February where he was informed power was off, but he confirmed before working that the power in question was still on. Had the claimant worked on the equipment with the power, he may have been injured, but he had equipment on hand that was designed for him to double check before beginning work. The claimant also reportedly requested multiple meetings to discuss safety from Ms. Roney, his supervisor and the safety manager. The employer reported the claimant had talked to Ms. Roney about various matters but not safety and that employees were expected to put concerns in writing, and his records reflected no records of any safety concerns being brought to any management. The claimant asserted that he believed if he would discontinue reporting work, he would get a meeting, but instead was surprised to learn separation occurred instead.

On the claimant's final day of work on March 7, he became upset with his manager, not about safety but because of teasing while he was working, referencing that Mr. Meyer said something to the effect, he (claimant) was a "real worker." The claimant then was a no-call/no-show for three consecutive shifts on March 15, 16 and 17, thereby initiating separation consistent with the employer's no-call/no-show policy. Even if the claimant had called off for the shifts, he would have likely "pointed out" due to attendance infractions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was 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 § 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 § 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 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. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit

under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

It is the duty of the administrative law judge as 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 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 believable evidence; 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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

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. The employer credibly testified that the claimant did not follow its policies by calling the hotline one hour prior to his shift to report absences on March 15, 16, and 17. The credible evidence is that the claimant discontinued reporting to work after being upset with his manager mocking him, and not due to a safety violation. Further the evidence does not support there was an existing safety issue at the time of separation or that the claimant had even made the employer aware of his concerns. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

Alternately, in the event that the separation was categorized as a discharge and not a quit, the claimant would remain disqualified.

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 Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Inasmuch as the claimant had been issued written warnings on January 22, 2016, February 8, 2016 and March 1, 2016, and failed to report for three days because he was upset with his manager or the work conditions, he has not established that his absences would be excused based on properly reporting and the reason for the absences. Therefore, the points attributed to his absences would have caused him to "point out". Whether a discharge or quit, the claimant is disqualified from benefits.

DECISION:

The April 28, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/css