

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ESTEBAN M BLACKHAWK
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 18A-UI-00390-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/10/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 2, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 5, 2018. The claimant participated personally. The employer participated through Cathleena Mayes, human resources associate. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer or was he 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 a laborer/operator (“boxing bellies”) and was separated from employment on November 29, 2017. The evidence is disputed whether the claimant quit or was fired from employment.

The employer has an attendance policy which designates point values for absences, and requires employees call the human resources line or speak to their supervisor 30 minutes in advance of any shift being missed. It also has a policy which states that five consecutive no-call/no-shows is deemed job abandonment. The claimant was aware of the employer policies.

The claimant last performed work on November 10, 2017, when he left his shift early to seek medical treatment after reporting pain in his shoulder. The claimant also reported the injury for purposes of worker’s compensation because he was unable to perform his job duties without his shoulder popping out. The claimant then called off work each day between November 13

through 17, 2017. The claimant stated one day he called off, he spoke to a representative and asked a message be given to his manager, who was reportedly in a meeting. The claimant wanted to talk to his supervisor because he was concerned about accumulating points. When the claimant did not hear from his supervisor, he assumed he had been fired. He discontinued reporting his absences to work, for November 21, 22, 24, 25, 27 and 28, 2017. He did not follow-up with human resources or attempt to contact his supervisor again, or directly. The undisputed evidence is the claimant was not told by the employer verbally, or in writing, that he had been fired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily quit the employment without good cause attributable to employer. Benefits are denied.

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.

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the evidence presented does not support the claimant was discharged.

In this case, the claimant last performed work on November 10, 2017, when he left work due to an injury, which appeared to be aggravated by working conditions. Aware of the employer's expectations and attendance policy, he properly reported absences for the period of November 13 through 17, 2017. The claimant understandable was concerned that he may be

accumulating attendance points while absent and reportedly asked a message be given to his supervisor, to call him back, so the claimant could discuss his employment status/point status. The claimant could not provide any specific information about the message communicated to the employer. Further, when he did not hear back, he made no additional attempts to contact the employer, whether through human resources or his supervisor directly, to discuss his employment status. Even though no one told the claimant verbally or in writing that he was being fired, he assumed he had been when his supervisor did not respond to a single message he left.

As a result, the claimant discontinued reporting his absences on November 21, 22, 24, 25, 27 and 28, 2017. The employer reasonably determined he had abandoned his job after six consecutive no-call/no-shows. The court in *Reelfs v. EAB*, No. 06-1750 (Iowa App. 6/27/2007) held that absences for more than three consecutive work days without proper notification and authorization shall be presumed to be a quit without good cause.

Further, where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. Iowa Department of Job Service*, (Unpublished Iowa Appeals 1984). Since the claimant did not follow up with human resources or his supervisor, and his assumption of having been fired was erroneous, his failure to continue reporting to work was an abandonment of the job. Benefits are denied.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The January 2, 2018, (reference 01) 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/scn