

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRAIG E COLLINS

Claimant

APPEAL 21A-UI-06646-ML-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRESTAGE FOODS OF IOWA LLC

Employer

OC: 01/17/21

Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 23, 2021, (reference 01) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits. The IWD representative's decision determined claimant was discharged from work for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2021. The claimant, Craig Collins, participated personally. The employer, Prestage Foods of Iowa, LLC, participated through Benefits and Compensation Supervisor Carol McClung.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
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: Claimant was employed full time as a Production Team Member. He began working for this employer on November 18, 2019, and he last physically worked on July 6, 2020. His immediate supervisor was Travis Hodges.

Employer has a written policy that states three consecutive no call no shows will be considered a voluntary quit by employees. Claimant received a copy of this written policy when he became employed by the employer. Claimant signed a document stating he had received a copy of the attendance policy during his orientation. At hearing, claimant testified he was aware of the attendance policy.

Claimant was scheduled to work on July 8, 9, 10, 11, 13, 14, 15, and 16, 2020. Claimant called in and notified the employer that he would not be at work on July 8, 9, 10, and 11, 2020. He did not call in or present to work on July 11, 14, 15, or 16, 2020. Claimant was considered to have voluntarily quit his job pursuant to the employer's written policy.

Claimant is adamant that he contacted Mr. Hodges every time he was not going to be able to make it into work. Claimant operated under the impression that Mr. Hodges was relaying the same to human resources. It is worth noting that the employer has an attendance hotline that employees are supposed to call when reporting absences. Claimant was aware of the company hotline, and had previously used the same to report his absences.

Employer implements a point system for attendance issues. After accumulating 7 points in a 12-month period, an employee can face disciplinary action. Employees participate in counseling sessions at 7, 8, and 9 points. Employees are subject to termination after they have accumulated 10 points. Between December 4, 2019, and July 8, 2020, claimant had accumulated 10.5 attendance points. More specifically, claimant received attendance points on 12/4/19, 12/5/19, 12/6/19, 1/8/20, 1/16/20, 1/24/20, 2/6/20, 4/21/20, 5/11/20, 5/14/20, and 6/11/20. Claimant then missed work for every shift between July 8, 2020 and July 16, 2020.

Claimant testified he missed a significant amount of work in 2020 as a result of being sick, dealing with the death of his mother, and a lack of transportation. Claimant testified that his lack of transportation was the main reason for his attendance issues in July, 2020.

Claimant believed he had been terminated by the employer for attendance issues in July, 2020. Claimant testified that he called Mr. Hodges a number of times to find out whether he had been terminated; however, Mr. Hodges did not answer or return claimant's calls. Claimant did not leave any voicemails; rather, he believed Mr. Hodges would recognize his number and call him back.

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.

Iowa Code section 96.5(2)a provides:

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

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 disqualification shall continue 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case claimant was absent from work on July 8, 9, 10, 11, 13, 14, 15, and 16, 2020. Claimant called in and notified the employer that he would not be at work on July 8, 9, 10, and 11, 2020. He did not call in or present to work on July 11, 14, 15, or 16, 2020. Claimant knew that he was supposed to report any absences prior to his scheduled shift start time. Claimant failed to report these absences in violation of the employer's policy.

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.

Despite calling in on July 8, 9, 10, and 13, 2020, claimant failed to call in or present to work on July 11, 14, 15, and 16, 2020. As such, this case must be analyzed as a voluntary quit case and not a discharge case as originally determined by the February 23, 2021, decision. 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).

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. 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 must be denied.

DECISION:

The February 23, 2021, (reference 01) unemployment insurance decision is modified with no change in effect. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.



Michael J. Lunn
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May 28, 2021
Decision Dated and Mailed

mjl/scn