

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEAN N RISTAU
Claimant

ALUM LINE INC
Employer

APPEAL 17A-UI-08614-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/28/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 17, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 11, 2017. Claimant participated. Employer participated through owner Gary Gooder. Operations manager Jeff McAllister attended the hearing on the employer's behalf. Employer Exhibit 1 was admitted into evidence with no objection.

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 welder/fabricator from November 21, 2016, and was separated from employment on May 31, 2017, when he quit.

The employer has a written no-call/no-show policy that provides “[i]f an employee is absent from work for three (3) consecutive working days without informing management, it will be assumed that the employee resigned and employment will be terminated[.]” Employer Exhibit 1. The employer requires employees to contact the employer and report of “any absence or tardiness within one half (1/2) hour of scheduled working hours.” Employer Exhibit 1. The employer does not accept text messages, but the employer has an absence/tardy hotline employees are to use to report their absences/tardies. The employer also has a drug testing policy, which allows for reasonable suspicion drug testing. Claimant was aware of the employer's policies.

On May 24, 2017, claimant spoke to the assistant foreman, Richard McKusker, informed him that he “refuse[d] to work in this shop” and then claimant walked off the job. Employer Exhibit 1. Claimant testified he quit because employees were using drugs. Claimant testified that he did not see any employees using drugs but he could smell it. Around May 24, 2017, claimant sent Mr. Gooder a text message making allegations that employees in the shop were using drugs, which was the first time Mr. Gooder was aware of any allegations that employees were using

drugs. Mr. Gooder spoke with Mr. McAllister about claimant's allegations. Mr. McKusker was not aware of any employees using drugs. Mr. Gooder testified that Mr. McKusker never appeared to be under the influence of drugs. The employer sent claimant a letter dated May 24, 2017. Employer Exhibit 1. The employer instructed claimant to return to work or he would be discharged. Employer Exhibit 1. The employer also informed claimant that it has a drug use policy in place and it will handle any violations in accordance with the policy. Employer Exhibit 1. The employer investigated claimant's allegation of employees using drugs, but it did not discover any employees using drugs. The employer did not drug test any employees around this time period because it did not have any suspicion of drug use.

Claimant failed to report for work or notify the employer of his absences for three consecutive scheduled workdays on May 26, 30, and 31, 2017 in violation of the employer's policy. Employer Exhibit 1. Claimant did not contact the employer to report his absences on these days. Employer Exhibit 1. The employer separated claimant from employment on May 31, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the 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 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 submitted. 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(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

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.

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).

Claimant's argument that he quit because employees were using drugs is not persuasive. Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant testified on May 24, 2017, he reported to a supervisor that employees were using drugs. Claimant then walked off the job and refused to return to work. Mr. Gooder credibly testified that once he was notified about claimant's allegations, he informed claimant that the employer would handle the situation and he instructed claimant to return to work. Employer Exhibit 1. Mr. Gooder further credibly testified that the employer investigated claimant's allegations, but did not discover any employee drug use. Claimant testified that he did not see any employees using drugs. Claimant failed to return to work after May 24, 2017. Claimant failed to establish there was drug use by employees at the employer. Claimant's failure to return to work renders the separation job abandonment without good cause attributable to the employer.

Furthermore, claimant was absent for three consecutive workdays (May 26, 30, and 31, 2017). Although claimant may have had text communication with the employer around May 24, 2017, he did not establish that he properly reported his absences for May 26, 30, and 31, 2017. Mr. Gooder credibly testified that claimant did not properly report his absences on May 26, 30, and 31, 2017. 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 claimant failed

to report for work or notify the employer for three consecutive workdays in violation of the employer policy, claimant is considered to have voluntarily left employment without good cause attributable to the employer.

Claimant failed to meet his burden of proof that the voluntary leaving was for good cause attributable to the employer. 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 August 17, 2017, (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