

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEISHA D GREENE
Claimant

TMONE LLC
Employer

APPEAL 17A-UI-04498-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/26/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 17, 2017, reference 02, unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 18, 2017. Claimant participated. Employer participated through executive admin Bridgit Mims.

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 sales representative from August 22, 2016, and was separated from employment on October 4, 2017, when she quit.

The employer has a written policy that provides that an employee is deemed to have quit their employment if they have four consecutive no-call/no-shows. Employees are supposed to contact the employer if they are going to be absent. Claimant was aware of the policy.

Claimant was scheduled to work on September 29, 2016, September 30, 2016, October 3, 2016, and October 4, 2016, but she did not work on these days. Claimant was a no-call/no-show on September 29, 2016, September 30, 2016, October 3, 2016, and October 4, 2016. September 29, 2016, September 30, 2016, October 3, 2016, and October 4, 2016, were four consecutive work days for claimant. On September 29, 2016, claimant did not call the employer to report her absence. On September 30, 2016, claimant did not call the employer to report her absence. On October 3, 2016, claimant did not call the employer to report her absence. On October 4, 2016, claimant did not call the employer to report her absence. September 28, 2016 was the last time claimant had contact with the employer. The employer does not have any documentation that claimant informed it that she was resigning. The employer had work available for claimant. Claimant did not have any prior disciplinary warnings.

After claimant was hired, she received two weeks of classroom training. Claimant then received on the job training. Ms. Mims is not aware of claimant making any complaints about the lack of training. Ms. Mims testified that if claimant had concerns about her lack of training, she could have spoken to her trainer, she could have filed a complaint, or she could have spoken to the center director.

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 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:

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.

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 she resigned due to a lack of training is not persuasive. The employer had no formal complaints by claimant regarding a lack of training. Furthermore, the employer did not have any documentation that claimant had given the employer notice that she was resigning. However, Ms. Mims credibly testified that claimant was a no-call/no-show on four consecutive days (September 29, 2016, September 30, 2016, October 3, 2016, and October 4, 2016). 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 four consecutive workdays in violation of the employer's policy, she is considered to have voluntarily left employment without good cause attributable to the employer.

Claimant's leaving the employment without notice or reason, and the failure to return to work renders the separation job abandonment without 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 April 17, 2017, reference 02, 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 her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs