

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAMELA D PETERSON
Claimant

APPEAL 16A-UI-03755-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS COMM SCHOOL DIST
Employer

**OC: 02/28/16
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 March 16, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on May 10, 2016. The claimant, Pamela D. Peterson, participated. Attorney Michael J. Tulis represented claimant. The employer, Council Bluffs Community School District, participated through witnesses Janet Reiners, chief human resources officer; Leslie Wrinkle, human resources specialist; and Virginia Bechtold, director of nutrition services; and was represented by Michelle Hawkins of Talx. Claimant's Exhibits A, B, C, and D and Employer's Exhibit 1 were received and admitted into the record without objection.

During the hearing, the employer asked that claimant's appeal letter be entered as an exhibit. Claimant objected, as this document was not provided as a proposed exhibit prior to the hearing and the attorney did not have a copy of the document. This document was not admitted as an exhibit. The administrative law judge understands that claimant's attorney may have commenced his representation of her after she filed her appeal and therefore he may be unfamiliar with the letter's contents. It is not the responsibility of the appeals bureau to provide this letter to each attorney who begins representing a client after the appeal is filed. Claimant's attorney requested "a complete copy of [claimant's] appeal file, including any records of the fact finding hearing," and these documents were sent to him, as well as claimant and the employer, nearly one month prior to the hearing date. If claimant's attorney did not receive the appeal letter in this set of documents, he had ample time to contact the appeals bureau and specifically request it. While the letter was not admitted as an exhibit, the administrative law judge has a duty to fully develop the administrative record. Therefore, the administrative law judge is taking official notice of the appeal letter filed by claimant on March 28, 2016.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a cook/server from August 23, 2013, until this employment ended on March 1, 2016, when she quit her employment.

Claimant had some issues with her attendance, as well as her attitude and behavior at work. As a result of these issues, claimant met with Bechtold on February 12, 2016. Claimant received a verbal warning during this meeting. Following this meeting, Bechtold documented the concerns they discussed in a memo. (Exhibit A) After this meeting, claimant and a coworker had a conversation regarding firearms and one or both of the employees bringing firearms into school property. In late February, claimant met with management and the police to discuss this issue.

On the morning of February 29, 2016, claimant met with Bechtold and discussed the Employment Assistance Program ("EAP"). Bechtold informed claimant she had made an appointment for her with the EAP. Claimant became upset and objected to this meeting, as she had her own counselor. After claimant said she would not go to the appointment, Bechtold told claimant to go home. Claimant got her purse out of her locker and left. While claimant maintains Bechtold told her that she was fired, Bechtold denies this.

Bechtold contacted human resources and told them that claimant refused to meet with the EAP. Wrinkle then contacted claimant, and claimant told her that she was "tired of fighting" and would not return to work. Wrinkle told her that if she was not going to return to work, she needed to submit a resignation letter or she would be considered to have abandoned her job. Claimant submitted her resignation letter the following day. (Exhibit C) In the letter, claimant states she met with Bechtold on February 29 and was asked to leave the building. (Exhibit C) Claimant does not state in this letter that anyone told her she was fired or no longer employed. Reiners, Wrinkle, and Bechtold all deny that claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

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

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 employer presented more credible testimony than claimant.

Based on the entire record and the credibility determinations drawn from the evidence and the testimony given during the hearing, the administrative law judge does not believe anyone told claimant she was discharged.

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.

Iowa Admin. Code r. 871-24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Here, claimant took an overt action in submitting a resignation letter to the employer, and the employer accepted claimant's resignation. Claimant has not shown any circumstances that were unsafe or intolerable that might entitle her to benefits. Benefits are withheld.

DECISION:

The March 16, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/pjs