

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENDA TORRES
Claimant

AVENTURE STAFFING & PROFESSIONAL
Employer

APPEAL 16A-UI-10082-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/31/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 16, 2016, (reference 04) unemployment insurance decision that denied benefits based upon her voluntary quit by refusing to continue working. The parties were properly notified of the hearing. A telephone hearing was held on October 4, 2016. The claimant Brenda Torres participated and testified. Claimant's husband, Salvador Torres was also present for the hearing but did not testify. The employer Aventure Staffing & Professional participated through Human Resource specialist Toni Holguin and Assistant Branch Manager Jennifer Thiele. Claimant's Exhibit A and employer's Exhibits 1 through 5 were received into evidence.

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 as a temporary employee, working part-time in various CNA jobs from May 23, 2016, until this employment ended on August 20, 2016, when she voluntarily quit.

The employer is a temporary staffing firm. While working for the employer claimant was assigned to various clients as a CNA on an as-needed basis. Claimant testified when she was hired by the employer she was guaranteed approximately 30 hours per week. The employer denied this claim and testified, as a staffing firm, they never guarantee employees any amount of hours, as they cannot be certain what the needs of their clients will be. By the end of July 2016 claimant became dissatisfied with the number of hours she was getting from the employer and began to look for other work. Claimant found another employer who indicated it was willing to hire her once she passed a specific licensing exam, which it would help her prepare for. However, claimant was not actually hired by this employer until very recently. Claimant also returned to school as a full-time student on August 22, 2016.

Throughout the month of August claimant was offered jobs on at least six occasions. Three of these jobs claimant accepted. She did not respond to the employer regarding whether she wanted to accept the other jobs. On August 25, 2016, claimant had a conversation with the employer in which she was specifically asked if she was quitting. Claimant said she would have to think about it and would get back to the employer. Claimant did not have any further contact with the employer. According to claimant, at some point in August, she determined she was "done" with this employer, though she never specifically communicated this to the employer. Rather, claimant stopped responding to the employer's inquiries regarding whether she was available for assignments.

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.

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 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:

- (3) The claimant left to seek other employment but did not secure employment.

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).

Here, claimant indicated one of the reasons she left was because she had found a job with another employer. While claimant was taking time to study for her licensing exam, with the assistance of this employer, in August 2016, she was not actually hired by the employer until very recently. Furthermore claimant indicated that she stopped responding to job assignment offers because she determined sometime in August that she was done with this employer and no longer wished to work for them due to her dissatisfaction with the number of hours she was receiving.

There is some dispute as to whether claimant was guaranteed a certain number of hours upon hire. 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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

While claimant did not specifically tell the employer she quit, her intentions were made clear when she ceased all communication. 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 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 are denied.

DECISION:

The September 16, 2016, (reference 04) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she is deemed eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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