

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JALISA M BELL**  
Claimant

**ALDI INC**  
Employer

**APPEAL 16A-UI-07599-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/05/16**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 1, 2016, (reference 05) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on August 8, 2016. The claimant Jalisa Bell participated and testified. The employer Aldi Inc. participated through District Manager Bryant Nicholson. Claimant's Exhibit A was received into evidence.

**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?

Is the claimant able to work and available for work effective June 5, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a store associate from October 2015, until this employment ended on January 4, 2016, when she voluntarily quit.

On December 26, 2015, claimant did not show up to work as scheduled. Claimant also missed scheduled shifts on December 27, 28, and 30, 2015 and January 2, 2016. According to Nicholson claimant did not call in or ask for time off any of these days. Nicholson testified both himself and Store Manager Ryan Cassidy made several attempts to contact claimant, including leaving her multiple voicemail messages. Claimant denied receiving any messages from the employer. Nicholson reported when they still had not heard anything from claimant by December 30, he called and left her a message stating if he did not hear back from her he would assume she was not coming back to work. Claimant denied receiving this message. No one at the employer heard back from claimant and on January 4, 2016, Nicholson made the decision to separate her from employment.

Claimant was absent from work on the days in question because she had a child in the hospital having major surgery. (Exhibit A). The surgery was originally scheduled to occur on December 21 and claimant had been approved for three days off work at that time. The surgery did not occur on the originally scheduled date, but was pushed back to December 26. Claimant testified she called the employer on December 26 and spoke to a shift manager named Cindy. According to claimant, she explained the situation to Cindy and told her she would need at least a week off work. Nicholson testified he spoke to Cindy on December 26 and she denied having heard from claimant that day. Claimant did not speak to Cassidy, because she thought he would probably too busy, given that it was the holiday season. Claimant testified she called back four days later and spoke to Cassidy who told her that she had been discharged for being a no-call/no-show.

### **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 96.5-2-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 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.

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.

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 missed five consecutive shifts, over a one week period, without notifying her employer. Several unsuccessful attempts were made to contact claimant by various staff members. Nicholson left claimant a voicemail message on December 30 advising her that if he did not hear back from her he would take that to mean she was not returning to work. Nicholson then waited an additional four days before he determined that claimant should be deemed to have been separated from employment. While it is understandable that things were likely very hectic for claimant during the time in question, 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. Since claimant did not follow up with the employer regarding the reason she was not at work, her failure to continue reporting to work or to otherwise maintain contact with the employer was an abandonment of the job. 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.

As claimant is disqualified for benefits, the issue of able and available is moot.

**DECISION:**

The July 1, 2016, (reference 05) 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. The issue of able and available is moot.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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