

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA C WARNER
Claimant

KUM & GO LC
Employer

APPEAL 17R-UI-00212-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/28/16
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 November 2, 2016, (reference 07) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 3, 2017. Claimant participated. Employer participated through Sales Manager Tiffany Albaugh. General Manager Morgan Fredricksen registered for the hearing on behalf of the employer, but did not attend the hearing.

ISSUE:

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 full-time as a sales associate from September 6, 2016, and was separated from employment on October 11, 2016.

Approximately a week prior to October 11, 2016, claimant notified the employer that she was moving from her house. Claimant told them there was a court date coming up regarding that issue and it might affect her work schedule. Claimant told the employer the court date was October 13, 2016.

On October 10, 2016, claimant came to work in jeans, not khakis. Ms. Albaugh allowed claimant to work outside of the work uniform (khaki pants and white buttoned shirt), but informed her that she had to show up for work in uniform on October 11, 2016 because corporate was going to be there. A couple weeks before October 10, 2016, claimant came to work in street clothes, but she was not allowed to work.

On October 11, 2016, claimant was scheduled to work at 9:00 a.m. Claimant was approximately fifteen minutes late to work. Prior to the start of her shift, claimant called the

employer to report she could not come to work because of an altercation at home. Ms. Albaugh offered claimant a ride and asked where she was at, but claimant then hung up on Ms. Albaugh. After claimant hung up, Ms. Albaugh continued working. Ms. Albaugh was busy that day because corporate was present and it was also a truck day. Ms. Albaugh was helping customers when claimant arrived approximately fifteen minutes late. Claimant arrived in "street clothes", not the required uniform. Claimant tried to explain to Ms. Albaugh what was going on. Ms. Albaugh had uniform clothes that would fit claimant and offered her a ride to go get the clothes when Ms. Albaugh was done helping customers. Ms. Albaugh was busy helping customers during the conversation. As claimant was trying to explain things, Ms. Albaugh asked her to hold on so Ms. Albaugh could help customers and then Ms. Albaugh would give her a ride. Ms. Albaugh believes claimant said fine. When Ms. Albaugh finished with the customer she had been helping, she turned towards claimant and saw her walking out the door. Ms. Albaugh asked claimant to wait a minute, but claimant continued out the door. Ms. Albaugh is not sure if claimant heard her. After claimant walked out the door, Ms. Albaugh continued to help customers. Ms. Fredricksen was on vacation, but the district manager told Ms. Albaugh to contact Ms. Fredricksen and have her come help out. Ms. Fredricksen then came to the store to help with the truck.

Ms. Albaugh did not have another conversation with claimant after she walked out on October 11, 2016. Claimant did not return to work on October 11, 2016. Claimant did not return to work after October 11, 2016. On October 11, 2016, Ms. Albaugh did not tell claimant that she was discharged. Ms. Albaugh wanted claimant to work because the employer was busy on October 11, 2016. Ms. Albaugh does not believe anyone from the employer told claimant she was discharged. There was work available for claimant had she not quit.

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 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 § 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(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

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).

Claimant's argument that she was discharged by Ms. Albaugh is not persuasive. Although claimant had been allowed to work without wearing the proper uniform on October 10, 2016, Ms. Albaugh told her on October 10, 2016 she had to be in full uniform on October 11, 2016. Furthermore, on October 11, 2016, when claimant arrived at work in "street clothes," Ms. Albaugh offered to give claimant a ride to go get uniform clothes once Ms. Albaugh was done helping customers. Ms. Albaugh needed claimant to work because the employer was busy and Ms. Albaugh needed her help. However, instead of waiting for Ms. Albaugh to finish helping customers, claimant left the employer and did not return. Ms. Albaugh did not have any further contact with claimant after she left.

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. Claimant's leaving the employment without notice, despite Ms. Albaugh's offer to get her uniform clothes, and her 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 November 2, 2016, (reference 07) 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