

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GWENDOLYN LINDSAY
Claimant

APPEAL 24A-UI-01422-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

HENNIGES AUTOMOTIVE IOWA INC
Employer

OC: 01/07/24
Claimant: Appellant (5)

Iowa Code section 96.5(1)d – Non-Work-Related Medical Quit

STATEMENT OF THE CASE:

The claimant, Lindsay Gwendolyn, filed an appeal from the January 24, 2024, (reference 01) unemployment insurance decision that denied benefits effective October 19, 2023, based upon the conclusion he was terminated due to excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on February 27, 2024, at 8:00 a.m. The claimant participated. The employer participated through Senior Human Resources Generalist Erin Wagner. Exhibits 1, 2, 3, 4, 5, 6, 8 and 9 were received into the record.¹

ISSUES:

Whether the claimant's separation from the employer is disqualifying?

If it is not disqualifying, whether the claimant was able and available after separating from the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a production associate from July 15, 2013, until this employment ended on September 19, 2023, when she quit. The claimant's immediate supervisor was Cliff Dodson, a finish supervisor.

The employer has an attendance policy. Under that attendance policy, employees are required to notify the company at least 30 minutes prior to their scheduled start time, if they are going to be late or absent for any reason. It gives a designated telephone number to call. The employer provided a copy of this attendance policy. (Exhibit 9)

On September 11, 2022, the employer approved the claimant to be placed on intermittent Family Medical Act Leave ("FMLA"). The claimant obtained a doctor's note that said she should

¹ Proposed exhibit 7 was excluded because it was merely proving the claimant had been sent these exhibits by certified mail. The claimant confirmed she received them.

be allowed to use up to two days per week for leave. The note did not specify what medical condition led to these flare ups.

On August 11, 2023, the employer sent a letter to the claimant informing her that she had exhausted her FMLA as of July 24, 2023. The letter stated that any time missed after that date would fall within the attendance policy. The employer provided a copy of this document. (Exhibit 8)

The claimant last worked for the employer on August 29, 2023. After that date, the employer attempted to contact the claimant repeatedly, but she did not respond.

On September 19, 2023, the employer terminated the claimant. It reasoned the claimant violated its policy regarding excessive absenteeism.

The claimant sought treatment from a rehabilitation facility on November 2, 2023. She was placed on a wait list. The claimant checked into an alcohol rehabilitation facility on January 8, 2024. The claimant graduated from the program on January 14, 2024. After that date, the claimant's illness has dissipated such that she is able to work.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer. Benefits are denied.

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 his 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.

Specifically, the administrative law judge finds the employer's date for the claimant's last day worked more accurate. The claimant repeatedly questioned her own ability to give specific dates on the record. In contrast, the employer provided testimony and exhibits showing the timeline of events.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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 did not return to work after August 29, 2023. She did not respond to the employer's repeated requests to contact her. At the time of her leaving, the claimant had completely exhausted her FMLA leave. These circumstances constitute over acts carrying out her intention to quit. It is acknowledged that the employer terminated the claimant on September 19, 2023, but that was well after the claimant quit.

A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant can show she can meet the requirement of element one because she left employment because of her alcohol addiction.

The claimant cannot meet the second element because she did not leave upon the advice of a licensed or practicing physician. Although the claimant's intermittent FMLA paperwork was certified by her physician, the scope of his approval did not include leaving her employment on an extended basis.

Third, the employer did not ever notify the employer of the reason for her absence and the employer never consented to it, so she cannot meet the third element.

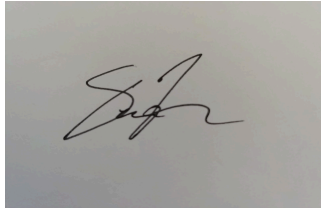
Fourth, the claimant did not ever return to offer services after she had recovered on January 14, 2024.

Since the claimant cannot meet all these elements, her quitting due to a non-work-related medical reason is not attributable to the employer. Benefits are denied.

The administrative law judge is not without empathy for the claimant. Alcohol addiction is a serious illness. The claimant should be congratulated for regaining her sobriety. The disposition of this case is merely an application of the facts to the existing law.

DECISION:

The January 24, 2024, (reference 01) unemployment insurance decision is MODIFIED WITH NO CHANGE IN EFFECT. The claimant voluntarily left her employment on August 29, 2023, without good cause attributable to the 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.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

March 5, 2024
Decision Dated and Mailed

smn/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.