

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACQUELINE E SNYDER
Claimant

R M H INC
Employer

APPEAL 17A-UI-07763-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/25/17
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 July 26, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on August 24, 2017. The claimant, Jacqueline E. Snyder, participated. The employer, R.M.H., Inc., participated through Travis Hinz, Administrator. Claimant's Exhibit A and Employer's Exhibits 1 through 12 were received and admitted into the record.

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 part time, most recently as a CNA, from April 20, 2016, until June 28, 2017, when she quit. Claimant last reported to work on June 23, 2017. She was scheduled to work on June 24 and June 25, but she did not come to work for these shifts. She called in sometime during her shift on June 24 and reported that she would not be at work that day. She called in prior to her shift on June 25 to report that she would not be at work for that shift, either. Claimant reported for her next scheduled shift on June 28, 2017. When she arrived that day, Marlene notified claimant that her shift had been covered that day. Claimant admits that no one told her she was fired at that point. Claimant assumed that she was fired, so she left and she did not return to work after that day. She was scheduled for work on June 29 and June 30, but she did not report for those shifts.

Claimant received a text message from Director of Nursing Morgan on Saturday, July 1, at 10:29 a.m. asking if she was able to work from 2:00 to 10:00 that day and the next day. Claimant did not respond to this message. She assumed that Morgan had not yet been notified

that she had been discharged. Claimant sent Hinz a text message at 7:26 p.m. on July 1, asking for her paycheck. Hinz responded to claimant via telephone and left her a voicemail message. Claimant never attempted to contact Hinz via telephone. Claimant had been scheduled through July 9, 2017. She was removed from the schedule after that time, as she had not come to work for any of her recent shifts. Previously, claimant was suspended for three shifts due to absenteeism. Claimant was notified by Marlene that her shifts were covered, and she was instructed to contact Hinz.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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).

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's testimony more credible than the claimant's testimony.

Here, the employer covered claimant's shift for June 28 as it was concerned that she would not come to work that day. When claimant arrived for that shift, she was told the shift was covered. Claimant did not ask if she still had a job at that time. She did not confirm when she should return to work, if at all, and she made no effort to contact Hinz at that time. Claimant then received a text message on July 1, asking her if she could work. She did not respond to this message. While the administrative law judge understands that communication may move slowly through a business, claimant's choice to assume that the Director of Nursing (who sent the text message) did not yet know that she had been fired was not reasonable. Since claimant did not follow up with Hinz or the Director of Nursing and her assumption of having been fired was erroneous, the failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The July 26, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was not discharged but separated from employment 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn