

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRETT SMITH**  
Claimant

**O'REILLY AUTOMOTIVE INC**  
Employer

**APPEAL 19A-UI-02513-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/24/19**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated March 13, 2019, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 10, 2019. Claimant participated. Employer participated by Amber Evans, Human Resources Coordinator.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 25, 2018. Claimant did not come into work, or respond to employer's attempts to contact him after that date.

Claimant began working for employer as a full-time parts specialist on May 23, 2010. Claimant contacted the employer on October 3, 2018 and reported that he was having medical problems. Claimant had been consuming alcohol, and he was in need of treatment. Employer placed claimant on a temporary leave of absence, and it sent claimant FMLA forms to fill out on October 9, 2018. Claimant was instructed to fill out the forms and send them back to employer as soon as possible.

Employer did not receive any documentation or completed FMLA forms as of October 31, 2018. On November 1, 2018 employer sent the FMLA forms to claimant again by certified mail. Claimant signed a return receipt for the mail on November 13, 2018. The documents included a letter which gave claimant until November 15, 2018 to respond to employer's requests. Claimant did not respond to the employer's November 1, 2018 letter, and he never filled out the FMLA application materials. Claimant did not return to work after that date.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship by abandoning his employment.

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(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Iowa Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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.*

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

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. Benefits must be denied.

**DECISION:**

The decision of the representative dated March 13, 2019, (reference 01) is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/scn