IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

SHANNON M LIPPER Claimant **ADAMS COMMUNICATIONS LLC** Employer	**APPEAL 17A-UI-09809-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/13/17** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a claim for unemployment insurance benefits with an effective date of August 13, 2017. On September 25, 2017, the claimant filed an appeal from the September 15, 2017 (reference 01) unemployment insurance decision that denied benefits based upon separation. On October 2, 2017, a first notice of hearing was mailed to the parties for a hearing to be conducted on October 12, 2017. On October 5, 2017, the claimant through counsel, sent discovery requests to the employer. A second notice of hearing was mailed on October 6, 2017 to the parties, for a scheduled hearing on October 20, 2017.

On October 13, 2017, a motion to continue was made by the employer and joined by the claimant's attorney to allow the parties to respond to and resolve discovery. The request was granted and a third notice of hearing was mailed to the parties on October 16, 2017, with a scheduled hearing date of November 6, 2017. After the mailing of the third notice of hearing, the employer sent discovery to the claimant. On November 1, 2017, another motion of continue was made, by the claimant and joined by the employer's attorney, to allow the parties additional time to prepare for the hearing. The request was denied for a lack of good cause.

A telephone hearing was held on November 6, 2017. The claimant participated personally and was represented by Benjamin J. Hamel, attorney at law. The employer participated through Jeffrey E. Hiatt, attorney at law. Corey Adams, managing member/co-owner, testified for the employer. Employer Exhibit 1 and Claimant Exhibits A through D were received into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer or was she discharged for disqualifying job-related misconduct?

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 sales associate and was separated from employment on August 15, 2017. The evidence is disputed as to whether the claimant quit or was discharged. Prior to separation, the claimant never had received any warnings and was not told her job was in jeopardy.

The undisputed evidence is the claimant last performed work on July 12, 2017. The claimant worked remotely from home, and on that day, was hospitalized due to a blood clot in her leg. She notified Mr. Adams and remained in contact with him, as she had several surgeries and recovered. The claimant was hospitalized from July 16 through 22, 2017 and upon release from the hospital, was not cleared to return back to work. Unbeknownst to the claimant, Linsy Adams, wife and co-manager, sent a vendor associated with the employer an email on July 21, 2017 stating the claimant was "no longer employed" with the employer (Claimant Exhibit A).

Ms. Adams did not attend the hearing but according to Mr. Adams, he directed her to notify the vendor that the claimant was not currently working and to redirect communications in her absence. Mr. Adams was unaware of the email sent by Ms. Adams until after the unemployment claim was established. The claimant was also unaware of the email sent to the vendor. The employer through Mr. Adams continued to communicate with the claimant, expecting she would return after she had healed. The July 21, 2017 email was not coupled with any other conduct such as telling the claimant she was discharged, either verbally or in writing.

Between July 22 and August 14, 2017, the claimant continued recovery and maintained contact with the employer through Mr. Adams, who repeatedly told the claimant she could not perform work until she was released by her doctor. In a July 27, 2017 text message, he referenced the claimant being "out recovering" (Employer Exhibit 1, page 5/32). He also sent messages to the claimant on July 28, 2017 which referenced the claimant's return back to work, and advised her "not to be working 'til the dr clears you" (Employer Exhibit 1, page 4/32). The claimant continued responding to customer inquiries and phone calls she received at home, against Mr. Adams' directives, which resulted in an exchange of text messages on August 3, 2017, when the claimant was unable to access an employer database. She asked Mr. Adams if the password had been changed, to which Mr. Adams said no, and asked the claimant if her doctor had cleared her to return to work (Employer Exhibit 1, page 6/32).

On August 3, 2017, the claimant visited her doctor who cleared her to return to work on "light duty" effective August 14, 2017 (Claimant Exhibit D). The claimant did not discuss her work duties with her physician which included handling sales and customer service matters, as well as helping with installation. No other information about "light duty" was provided by the claimant's doctor, and at the time of the hearing, the claimant had not been released to return to work without restriction.

On August 14, 2017, the claimant called Don Mueller, who worked with the vendor associated with the July 21, 2017 email. The claimant stated she was calling for an update since she was planning to return to work. At that time, Mr. Mueller stated he did not think she had work to return to, based upon an email sent by the employer to his company about the claimant on July 21, which stated she was no longer with the company. The claimant did not contact Mr. Adams or Ms. Adams to ask about the email or why the email had been sent. The claimant also did not inquire with Mr. and Mrs. Adams about why there was continued contact with her about her recovery and plans to return to work once released, if she had been discharged, while still

hospitalized, on July 21, 2017. Instead, the claimant sent Mr. Adams a text message, without referencing the information Mr. Mueller had given her, stating she would be back to work on Thursday, August 17,2017. Mr. Adams acknowledged he did not reply to the text message because he was busy.

The claimant then received a forwarded copy of the July 21, 2017 email from Mr. Mueller on August 15, 2017, at 10:33 a.m. She then resent her text message to Mr. Adams at 11:49 p.m. The claimant did not ever inquire about the single email sent to the vendor on July 21, 2017 and did not attempt to return to work as she stated she would in her August 14 and 15, 2017 text message. The claimant stated she did not return to work because she believed she had been fired based upon the July 21, 2017 email.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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*. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the evidence presented does not support the claimant was discharged.

On July 21, 2017, the claimant was hospitalized for a personal medical condition, and during her hospitalization, the employer sent an email to a third party vendor, stating the claimant was no longer with the company (Claimant Exhibit A). The claimant had no knowledge of the email until weeks later, and continued contact with the employer as though she would be returning to work. The email itself, which may have been due to a miscommunication between Mr. and Mrs. Adams, had no bearing on the communications with the claimant thereafter, inasmuch as Mr. Adams continued contact with the claimant, repeatedly referencing her return to work upon being cleared by her physician (Employer Exhibit 1, pages 4/32, 5/32, 6/32).

The single email sent by the employer to a vendor on July 21, 2017, unbeknownst to the claimant at the time, was not coupled with any other conduct that would reasonably support the employer's intent to sever the employment. The undisputed evidence is the claimant was not told she was fired or her items collected. The employer did not ever provide communications directly to the claimant supporting a termination. Rather, the employer repeatedly asked the claimant when she was coming back. If the employer had fired the claimant effective July 21, 2017, as asserted by the claimant, Mr. Adams would not have continued asking the claimant about her return and release from her doctor. The claimant herself testified she had never received any warnings or notice her job was in jeopardy. The claimant elected not to return to work, when continuing work was available, and therefore, this separation must be considered a quit for unemployment benefits purposes.

Where an individual mistakenly believes that she is discharged and discontinues coming to work (but was never told she was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. Iowa Department of Job Service,* (Unpublished Iowa Appeals 1984). Since the claimant did not return to work after being released by her doctor (Claimant Exhibit B) or follow up with management when she learned of the July 21, 2017 email, and her assumption of having been fired was erroneous, her failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The September 15, 2017, (reference 01) decision is affirmed. The claimant was not discharged but voluntarily quit the employment without good cause attributable to 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.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

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