IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ELISHA S MANSARAY Claimant **NEBRASKA FURNITURE MART INC** Employer	**APPEAL 16A-UI-10973-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/04/16** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 6, 2016, (reference 05) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 25, 2016. Claimant participated. Claimant was represented by non-attorney representative Jon Geyer. Employer participated through attorney Robert Rojas, human resources manager Stacey Harbaugh, store director Tim Mullen, and assistant store director/operations manager Brock Brown. Claimant exhibit A was offered into evidence by claimant. Claimant did not send the document to the employer prior to the hearing. The employer objected because they did not receive the document. The employer's objection was sustained and claimant exhibit A was not admitted into evidence. Claimant exhibit B was offered into evidence by claimant. Claimant did not send the document to the employer prior to the hearing. The employer objected because they did not receive the document. The employer's objection was overruled. Claimant exhibit B was a document produced by the employer. Claimant exhibit B was admitted into evidence for the sole purposed regarding claimant's receipt of bereavement pay. Claimant exhibit C was admitted into evidence with no objection. Employer exhibits 1, 2, 3, and 4 were admitted into evidence with no objection.

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 machine operator from July 6, 2015, and was separated from employment on September 9, 2016, when he quit.

The last day claimant worked for the employer was on August 28, 2016. On August 28, 2016, claimant was informed that a family member had passed away. Claimant contacted his supervisor, Jessica Clark, on August 28, 2016, about his situation. Ms. Clark told claimant he had three days of bereavement leave, but that if he needed more days off, he had to request

more time off. Claimant was scheduled to work August 29, 30, and 31, 2016. Claimant did not work August 29, 30, and 31, 2016 and used bereavement. On August 31, 2016, Ms. Clark contacted claimant via text message and stated the employer needed to know what his plan was and claimant responded ok. Claimant was scheduled to work on September 1, 2, 4, 6, 7, and 8, 2016 (September 5, 2016 was a holiday). Claimant did not work on September 1, 2, 4, 6, 7, and 8, 2016. Claimant did not contact the employer on September 1, 2, 4, 6, 7, and 8, 2016. The employer did not separate claimant for these absences, because it did not know what was going on.

The employer did make contact on September 9, 2016 with claimant. Claimant came to the employer and spoke to Mr. Brown and Ms. Clark. The employer told claimant they needed him to communicate with the employer. Claimant stated he needed more time because of a death in the family. Claimant stated he needed more time off, but did not say what time was needed. Claimant asked the employer if he could go home. It was not claimant's scheduled work day so Mr. Brown stated ok, but that the employer needed claimant to communicate with the employer. At one point during the conversation, claimant stated so you are firing me and Mr. Brown responded no, but that claimant needed to communicate with the employer. Mr. Brown stated multiple times it was ok if claimant needed more time, but that he needed to communicate with the employer about what was going on. Claimant then left the employer. September 9, 2016 was the last time Mr. Brown heard from claimant. Claimant was next scheduled to work on September 11, 2016, but he did not work that day and he did not contact the employer. On September 28, 2016, claimant returned his uniform to the employer. There was work available for claimant after September 9, 2016.

On October 3, 2016, Mr. Mullen had a phone conversation with claimant. Mr. Mullen told claimant he had not been discharged and he was still an employee. Mr. Mullen told claimant that he needed to return to work. Claimant did not return to work for the employer.

On October 10, 2016, the employer sent claimant a letter dated October 10, 2016 via FedEx overnight. Employer Exhibit 1. The employer received information from FedEx that the letter was delivered on October 11, 2016. Employer Exhibit 3. The letter advised claimant that the he had not communicated with the employer for over four weeks, but that he was still considered an employee. Employer Exhibit 3. The letter also stated claimant must report for his scheduled shift on October 12, 2016, or the employer would consider it an absence according to its attendance policy. Employer Exhibit 3. Claimant did not return to work for his scheduled shift. The employer considered claimant employed until October 14, 2016, when it considered him to have abandoned his job because of two consecutive no-call/no-shows on October 12 and 13, 2016. Employer Exhibit 4.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the 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 reviewed the exhibits submitted by both parties. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

The first issue is whether claimant's separation was a discharge or a voluntary quit. For the reasons stated below, the administrative law judge finds claimant voluntarily quit his employment on September 9, 2016, when he did not return to work for the employer.

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(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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

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. Although claimant contacted the employer after he was informed about a death in his family, he failed to maintain contact with the employer. Claimant did not contact the employer and did not work on September 1, 2, 4, 6, 7, and 8, 2016, despite being scheduled to work those days. On September 9, 2016, the employer and claimant finally had contact and he met with Mr. Brown and Ms. Clark. Claimant's argument that he was discharged on September 9, 2016 by Mr. Brown telling him to go home, is not persuasive. During the meeting, Mr. Brown repeated multiple times that claimant needed to

maintain contact with the employer. At one point during the conversation claimant asked if he was fired and Mr. Brown clearly instructed claimant that he was not fired. When claimant left the meeting on September 9, 2016, the employer had not told claimant he was fired. Furthermore, Mr. Mullen told claimant he was not fired on October 3, 2016 and the employer also sent claimant a letter dated October 10, 2016 stating he was not fired and he was to report to work on October 12, 2016. Employer Exhibit 1.

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. Since claimant did not follow up with management personnel or the store director, and his assumption of having been fired was erroneous, his failure to continue reporting to work was an abandonment of the job. 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 October 6, 2016, (reference 05) 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 his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs