

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PINKIE M COLLETT
Claimant

A TO Z CORPORATION
Employer

APPEAL 16A-UI-07447-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/12/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 6, 2016, (reference 05) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 25, 2016. The claimant participated personally. The employer participated through Christine York, executive director. Jenny Smith and Angie Shuey also testified. Employer exhibit 1 and claimant exhibit A were admitted 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 the claimant voluntarily quit the employment with good cause attributable to the employer or was the claimant 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 part-time as a childcare provider and was separated from employment on June 1, 2016, when she quit the employment. Continuing work was available.

Prior to separation, the claimant had an incident in February/March 2016, in which she left the employment due to a personal reason, and according to the employer, left without staff coverage, and was required to reapply for her position. When she was rehired by Ms. York, she was advised that her attendance was vital and she needed to leave personal matters at home. The claimant responded by hugging Ms. York and thanking her for a second chance.

On June 1, 2016, the claimant called the employer at approximately 5:00 a.m. and spoke to Shirley, a long term employee, who was not in management. The claimant reported her absence to Shirley, for her 11:00 a.m. shift, and was advised she needed to speak to Jenny Smith or Angie Shuey. The claimant also told Shirley, that she had a lot of things going on right now and would call when she was able to work. The reason the claimant called off of work was that she had a fight with her boyfriend the night before, was up late, and he took her keys and

phone from her. The claimant used her sister's phone. The claimant had previously received rides from co-workers when requested, but did not make any attempts to obtain transportation for her shift six hours after she called off. The claimant attempted to Facebook message Ms. Smith and Ms. Shuey through her sister's phone but did not call back to speak to them, or call in to report her absences on June 2, and 3. On June 6, 2016, the claimant called the employer regarding her employment and was told she would need to reapply. In a later exchange via Facebook, Ms. Smith at one point advised the claimant she needed to speak to Linda, who was in charge of staffing, and the claimant never followed up with Linda. The claimant was permitted to remain on an on-call status, and eligible for rehire if a position was available. The employer asserted the claimant's job was not held open due to having to meet mandatory minimum ratio of adult to children supervision. The claimant denied quitting, but rather, was laid off due to a lack of work.

The employer also has a policy which indicates employees may not communicate absences via Facebook with management, and that three days of no-call/no-show will result in separation due to job abandonment. The claimant received the handbook upon hire but admitted she did not read it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to 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(27) and (37) 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:

(27) The claimant left rather than perform the assigned work as instructed.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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 Ct. 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*, 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. *State v. Holtz*, 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 claimant was not laid off due to a lack of work, but quit without good cause as defined by the Iowa unemployment insurance law.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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. Specifically, the employer's business is directly affected by employee absences because of mandatory adult to children ratios. The administrative law judge concludes that based on the evidence presented, the employer reasonably interpreted the claimant's call on June 1, 2016 to be a resignation, coupled with her failure to report to work on June 2 or 3, or to report her absences in accordance with the employer's policy, which prohibits use of Facebook for notifying managers of absences. Further, the administrative law judge is persuaded that based on her use of her sister's phone to use Facebook, and the employer's prior history of helping her accommodate transportation, that the claimant could have properly reported her absences, or alternately, requested transportation assistance, if she wanted to preserve employment. While the 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 July 6, 2016, (reference 05) unemployment insurance decision is affirmed. The claimant voluntarily left the 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs