

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RENEE L LUKE**  
Claimant

**DEERE & COMPANY**  
Employer

**APPEAL 17A-UI-04795-JP**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/09/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 25, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held at 3420 University Avenue, Suite A, Waterloo, Iowa on September 20, 2017. Claimant participated. Heather Sherwood observed the hearing. Employer participated through labor relations administrator Craig Cornwell. Employer Exhibits 1, 2, 3, 4, and 5 were admitted into evidence with no objection.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assembly worker from October 2, 2000, and was separated from employment on March 24, 2017. Claimant was separated from employment for violating the employer's no-call/no-show policy.

The employer has a written policy that provides an employee quits if they “[remain] away from work for three (3) consecutive days without a satisfactory reason.” Employer Exhibit 1. Claimant was aware of the policy. The employer also provides its employees with WI (weekly indemnity), which is a benefit that employees can receive for non-work related injury or illness. If an employee is on WI, they are required to inform the employer of any changes to their condition or status, but they do not have to report their absences.

On January 18, 2017, claimant was sent home from work due to a non-work related injury. The employer instructed claimant that she could not return to work until she provided a release from her doctor. Claimant did not return back to work prior to her separation. On January 20, 2017, claimant went to her regular doctor. Claimant was released to return to work with light duty on January 20, 2017. Claimant was also given a doctor's note excusing her from work through January 23, 2017. Claimant provided both doctor notes to the employer. Claimant's regular doctor also referred her to a specialist. On January 23, 2017, claimant met with the specialist,

which then referred her to a neurologist. The specialist did not modify claimant's work restrictions. On January 30, 2017, claimant met with the neurologist. The neurologist excused claimant from work until she saw a specialist in Iowa City. On February 9, 2017, claimant completed a nerve test. On March 1, 2017, claimant met with a specialist in Iowa City. The specialist in Iowa City did not put claimant on any work restrictions.

On March 2, 2017, claimant called the employer and informed it she had her appointment in Iowa City, but did not provide any documentation that she was to remain off work. Based on claimant's message, the employer contacted her neurologist's office sometime between March 2, 2017 and March 7, 2017, and was informed claimant had been released to work as of February 10, 2017. See Employer Exhibit 4.

The employer attempted to contact the claimant on March 7, 9, and 10, 2017, but the employer was unsuccessful. The employer left a message each time it called claimant and requested information from her health care provider in Iowa City showing that she was to remain off of work. Claimant did not listen to the messages until the following week. Claimant did not return the employer's phone calls.

On March 13, 2017, the employer sent claimant a certified letter that her WI benefits were suspended as of March 6, 2017 because she was not complying with the WI rules. Employer Exhibit 2. Claimant did not comply when she failed to provide documentation that showed she was to remain off of work. Claimant signed for the certified letter, but she did not contact the employer right away. Employer Exhibit 2. Claimant testified that although she received the letter, she waited approximately two weeks before she contacted the employer on March 26, 2017 about the letter.

Claimant was a no-call/no-show for work on March 21, 22, and 23, 2017. March 21, 22, and 23, 2017 were three consecutive work days for claimant. Claimant did not call the employer to report her absences for March 21, 22, and 23, 2017. On March 24, 2017, the employer sent claimant a three day quit letter by certified mail. Employer Exhibit 3. The three day letter was sent to claimant to give her an opportunity to provide a satisfactory reason to excuse her absences. The certified mail was return to the employer after unsuccessful attempts to deliver it to claimant. Employer Exhibit 3.

On March 26, 2017, claimant left message for the employer that she needed to get some WI paperwork from the employer to send to Iowa City. On March 27, 2017, WI services contacted claimant and informed her that labor relations would have to clear any release of paperwork due to her three days of no-call/no-shows.

On March 30, 2017, WI services contacted the neurologist office in Waterloo and requested paperwork on when claimant was seen and to return to work. On March 30, 2017, the neurologist's office in Waterloo faxed paperwork to the employer that claimant was to return to work on February 10, 2017. Employer Exhibit 4.

On March 31, 2017, the employer, a union representative, and claimant had a conference call. The employer explained to claimant that she should have returned to work on February 10, 2017 based off the form from the neurologist and the employer did not have any paperwork keeping her off of work. Employer Exhibit 4. Claimant told the employer she did visit Iowa City, but it was a onetime visit and she did not have a follow-up appointment in Iowa City. Claimant told the employer she was attending physical therapy twice a week. The employer requested claimant provide a doctor's note showing she could not return to work. Claimant told the employer she would work on it.

On April 3, 2017, the employer still had not received any paperwork from claimant's doctor. The employer contacted claimant and requested she bring any doctor paperwork excusing her from work. The employer set up a meeting with claimant for April 4, 2017. On April 4, 2017, claimant attended a meeting with the employer and two union representatives. Claimant did not have any paperwork from her doctor covering her absences. Claimant did not inform the employer she had any upcoming doctor appointments. The employer asked claimant why she did not contact the employer from March 3, 2017 through March 25, 2017. Claimant told the employer she did not like talking to WI service representative Shelly. Claimant told the employer she did not try to contact the union or any other employee either. The employer notified claimant her employment ended.

On April 5, 2017, claimant obtained a doctor's note that stated she was "unable to work due to aggravation of her underlying problem." Employer Exhibit 5. Claimant's doctor "recommend[ed] this patient not return to work until [the doctor] reassess[es] her on May 4, 2017." Employer Exhibit 5. On April 6, 2017, claimant obtained a doctor's note that excused her from work from February 9, 2017 through May 4, 2017. Employer Exhibit 5.

#### **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 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*, 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 that were admitted into the record. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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. Claimant started on WI benefits in January 2017 and did not have to report her absences to the employer while she was on WI benefits; however, her WI benefits were suspended effective March 6, 2017 for failing to comply with the WI rules. The employer called claimant on three separate days (March 7, 9, and 10, 2017) to request information that she was to remain off work, but claimant refused to return the employers phone calls. Employer Exhibit 2. The employer also sent claimant a letter dated March 13, 2017, but she did not open the letter until two weeks after she received it. Furthermore, claimant's neurologist released her to return to work on February 10, 2017. Employer Exhibit 4. Even though the date expected to return of "unknown" was crossed out and "2-10-17" handwritten in, the evidence presented was that claimant's neurologist's office entered this information. See Employer Exhibit 4. No evidence was presented that the employer altered the return date on the paperwork. Thus, Employer Exhibit 4 corroborates the employer's phone conversation with claimant's neurologist's office between March 2, 2017 and March 7, 2017 that claimant had been released to return to work on February 10, 2017. Employer Exhibit 4.

Because claimant was no longer receiving WI benefits and she had been released to return to work by her neurologist's office, she was required to report her absences. Claimant did not return to work and was a no-call/no-show on March 21, 22, and 23, 2017 in violation of a known policy. On March 31, 2017, April 3, 2017, and April 4, 2017, the employer requested claimant provide documentation from her doctor that she was to be off work to excuse her absences. Claimant failed to provide the employer any doctor's note by April 4, 2017 that she was to be off work from February 10, 2017 through April 4, 2017 and her separation from employment remained in effect.

Inasmuch as claimant failed to report for work or notify the employer for three consecutive workdays (March 21, 22, and 23, 2017) in violation of the employer policy, claimant is considered to have voluntarily left employment without good cause attributable to the employer. 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 April 25, 2017, (reference 01) 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 her weekly benefit amount, provided she is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs