

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA K BASHOR
Claimant

ASSISTED LIVING CONCEPTS LLC
Employer

APPEAL 18A-UI-03527-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/11/18
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 12, 2018, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 11, 2018. Claimant participated. Susan Bashor attended the hearing on claimant's behalf. Employer participated through care services manager Shelli Brown and executive director Sammarra Smith. Official notice was taken of the administrative record 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 assistant chef from September 6, 2017, and was separated from employment on December 6, 2017, when she quit.

The last day claimant performed work for the employer was on November 26, 2017. On November 27, 2017, claimant had surgery due to a non-work related medical issue. Prior to November 27, 2017, the former executive director granted claimant a two week medical leave after her surgery. Claimant was scheduled to return to work on December 11, 2017.

On November 28, 2017, claimant met with Ms. Brown at the employer. Claimant told Ms. Brown that the doctor told her she could return to work the next day (November 28, 2017). Claimant had a same day surgery note releasing her to return to work on November 28, 2017. Claimant also discussed with Ms. Brown her other health issues. Claimant asked Ms. Brown questions about information the doctor had given her because she was going to have to have other procedures done. Ms. Brown went over the information with claimant and answered her questions. Ms. Brown told claimant to get her other procedures done that she needed to get done. Ms. Brown also told claimant that the employer would need a release to return to work from her doctor for these other procedures.

On December 1, 2017, claimant's mother Susan Bashor, who is the head cook at the employer, told Ms. Brown that claimant was feeling better and she intended to return to work on December 4, 2017. Ms. Brown told Susan Bashor that this was great, but asked Susan Bashor to remind claimant that she needed to provide the employer a release to return to work. Ms. Brown would have accepted the same day surgery note from the November 27, 2017 surgery because claimant had not had any subsequent procedures.

On December 3, 2017, claimant called the employer and was upset that she needed a release to return to work. Ms. Brown was not in the building on December 3, 2017. Claimant called the employer again on December 3, 2017 and was still upset. Later on December 3, 2017, claimant called another employee (Judy) and asked Judy to cover for her on December 4, 2017. Claimant told Judy she was in pain due to a medical issue. Claimant told Judy about her medical condition. Judy agreed to cover for claimant.

On December 5, 2017, Ms. Brown received a fax from the Cass County Memorial Hospital emergency room stating claimant had been in the emergency room on December 4, 2017. Also on December 5, 2017, Susan Bashor told employees that claimant had a lot of medical issues that were serious.

On December 6, 2017, Ms. Brown called claimant to see how she was feeling. Claimant started yelling at Ms. Brown that she was not going to return to the employer and she had filed for unemployment insurance benefits. Claimant then hung up on Ms. Brown. Approximately five minutes later, Ms. Brown called claimant back to see what was going on, but claimant was yelling so much Ms. Brown could not figure out what was going on. Claimant kept yelling that she was in pain and had a lot of medical issues. Claimant was also yelling that no one cared. Claimant then stated that Ms. Brown refused to give claimant her phone number. Ms. Brown testified that her phone number is posted in several places at the employer. Claimant then hung up on Ms. Brown again. Claimant also spoke to another employee, Mark Smith, on December 6, 2017. Claimant told Mr. Smith she was not returning to the employer.

Claimant did not contact or return to the employer after December 6, 2017. The employer had work available for claimant. The employer never told claimant that she was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to 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 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(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:

(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.

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).

On December 6, 2017, after Ms. Brown called claimant to see how she was doing, claimant yelled at Ms. Brown that she was not coming back to the employer. On December 6, 2017, claimant also told another employee, Mr. Smith, that she was not returning to the employer. Claimant did not return or have any contact with the employer after December 6, 2017. Claimant's argument that she thought she was discharged is not persuasive. 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. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). Since claimant did not follow up with management personnel or the owner, and her assumption of having been fired was erroneous, her failure to continue reporting to work was an abandonment of the job.

Claimant has not demonstrated that a reasonable person would find the work environment detrimental or intolerable. *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Claimant has not met her burden of proving that her voluntary leaving was for 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 March 12, 2018, (reference 03) 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs