

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERCY TWEH
Claimant

ABM ONSITE SERVICES MIDWEST INC
Employer

APPEAL 16A-UI-10155-JP
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/14/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 8, 2016, (reference 04) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held on October 4, 2016 at 1000 East Grand Avenue, Des Moines, Iowa. Claimant participated. Catherine Deh interpreter on behalf of claimant. Employer participated through account manager Brooke Hupke, account supervisor Jacquie Sciorrotta, and was represented by hearing representative Melissa Hill. Liz Folkers attended the hearing as an observer.

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 general cleaner from August 24, 2015, and was separated from employment on August 2, 2016.

The employer has a written no-call/no-show policy; if an employee has three consecutive work days of no-call/no-shows it is an automatic separation. Claimant was aware of the policy. The employer has a call in procedure that requires employees to call in four hours prior to the start of their shift if they are going to be absent. Claimant was aware of the call in procedure.

The final incidents occurred when claimant failed to report for work or notify the employer of her absences for four consecutive scheduled workdays on July 27, 28, and 29, 2016, and August 1, 2016 in violation of the employer's policy. Claimant was separated from employment because of her no-call/no-shows.

On March 14, 2016, the employer gave claimant a written warning for excessive absenteeism. Claimant had six absences and at least two were due to transportation issues. Claimant was

warned her job was in jeopardy. Claimant had been discharged by the employer on August 20, 2015 because of absenteeism issues and the employer rehired her on August 24, 2015.

The employer was aware of claimant's transportation issues around the end of July 2016. The employer did provide transportation for claimant on occasion to and from work, but it is the employee's responsibility to provide their own transportation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was not a discharge, but a voluntary quit without good cause attributable to the employer when she had four consecutive no-call/no-shows in violation of the employer's policy. 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 finds the employer's version of events to be more credible than claimant's recollection of those events.

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(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).

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. Employees are responsible for getting to work on time. Although the employer would provide claimant transportation to work on occasion, claimant was ultimately responsible for getting to work on time. Furthermore, claimant failed to contact the employer and report her absences for four consecutive work days, in violation of the employer's no-call/no-show policy.

Inasmuch as claimant failed to report for work or notify the employer for four consecutive workdays 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.

In the alternative, if claimant's separation is determined to be a discharged, for the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. 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 Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that claimant was warned that further unexcused absences could result in termination of employment and her final absences on July 27, 28, and 29, 2016, and August 1, 2016 were not excused. The final absences, in combination with the claimant's history of unexcused absenteeism, are considered excessive. Benefits are withheld.

DECISION:

The September 8, 2016, (reference 04) 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