IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

HEATHER M SLOAN Claimant **HY-VEE INC** Employer	**APPEAL 16A-UI-06342-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/31/16** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 1, 2016, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on June 22, 2016. The claimant participated personally. The employer participated through Bruce Burgess, hearing representative with Corporate Cost Control. Drew Nardy and Roxanne Nowicki testified for the employer. Employer exhibits 1 through 8 were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a customer service representative and was separated from employment on April 20, 2016 when she quit the employment.

The employer has a policy which requires employees to notify the employer at least three hours prior to start time of a shift if they are unable to work the shift (Employer exhibit 7). The employer also reported it has a policy which states that three consecutive unexcused absences will lead to separation. The claimant was made aware of the employer's policies at the time of hire (Employer exhibits 4 and 5). The claimant last performed work on April 17, 2016. During this day, she also learned her childcare provider was unavailable moving forward due to domestic issues. On April 18, 2016, the claimant reported to the employer an absence due to childcare issues (Employer exhibit 1). The evidence is disputed as to whether the claimant referenced the issue was childcare for her own child or her boyfriend's child, or both. As a result of the called off shift, the employer held a meeting with the claimant on April 20, 2016, prior to the start of the claimant's shift. The claimant walked to the employer shift, and attended the meeting with both her five-year-old child and her boyfriend's five-year-old child, in tow. The claimant explained the childcare situation to the employer, and the employer explained that

childcare of her boyfriend's child was not an excused absence. The evidence is disputed as to whether the claimant explained the childcare issue was related to both children, but the undisputed evidence is that the claimant was warned that her job was in jeopardy if she did not work her shift upcoming April 20, 2016 shift. The claimant reportedly said something to the effect of "if this is the way it's going to have to be" in response to the employer warning the claimant about the consequences for missing her future shift, and Mr. Nardy responded by telling the claimant not to throw in the towel.

The claimant did not find coverage for her shift or childcare and did not report to work on April 20, 2016 as directed by the employer. During the meeting with the employer, the claimant was provided a list of names to call of other employees that may help with coverage or babysitting and the employer reported that when it checked with the listed employees, they all denied being contacted by the claimant. The claimant believed she had been fired based on the employer's warning to her during the meeting even though she was never told by the employer she was fired. The employer did not fire the claimant when she failed to report to work on April 20, 2016. The claimant was then a no call/no show on April 21, 2016, initiating three days of unexcused absences. The claimant failed to report for another shift or contact the employer after the meeting on April 20, 2016. Prior to April 18, 2016, the claimant had no warnings for attendance.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that the claimant voluntarily quit for good cause attributable to the employer when the claimant terminated the employment relationship on April 20, 2016.

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), (17) and (28) 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:
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> (27) The claimant left rather than perform the assigned work as instructed.
>
> (17) The claimant left because of lack of child care.
>
> (28) The claimant left after being reprimanded.

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 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. *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. *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 has not satisfied her burden to establish by a preponderance of the evidence that she quit for reasons that would be good cause under Iowa unemployment insurance law.

The undisputed evidence is that the claimant reported an absence for her April 18, 2016 shift due to a lack of childcare. Regardless of whether the claimant intended to mean childcare for her own child or also her boyfriend's, the absences would be unexcused. 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). As a result of the claimant's absence, she was issued a verbal reprimand on April 20, 2016 in advance of her scheduled shift that day and warned her job was in jeopardy. The administrative law judge is not persuaded that the employer informed the claimant she would be discharged if she missed April 20, 2016, but rather that she could be. The evidence presented further establishes that the claimant did not make efforts to secure childcare coverage or shift coverage, even though a list of employees was furnished to her, and the employer encouraged her not to "throw in the towel."

After April 20, 2016, the claimant failed to report to work again, or contact the employer to report further absences. There is no evidence the employer discharged her on April 20, 2016 for failure to work her shift. The claimant assumed she was discharged based on the earlier meeting. 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 the claimant did not follow up with management personnel or the owner after April 20, 2016, and her assumption of having been fired was erroneous, her failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The decision of the representative dated June 1, 2016, (reference 02), is affirmed. Unemployment insurance benefits shall be withheld until the 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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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

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