

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA M TORRES

Claimant

PACKERS SANITATION SERVICES INC

Employer

APPEAL NO. 19A-UI-00648-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/23/18

Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 14, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 7, 2019. Claimant participated. Employer participated by William Ortwine.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 28, 2018. Claimant was ill because of allergies, a sinus infection and other medical problems after that date. The next date claimant stated that she felt recovered was on or around January 17, 2019.

Claimant became ill from her allergies and could not return to work after November 28, 2018. Claimant brought in a doctor's note that covered her being off work from November 28 through December 8, 2018. The entire next week claimant missed work, but she did call in to report her illness. Claimant's last call in to work reporting her ongoing illness was on December 17, 2018. Claimant was a no-call/no-show from that point forward.

Claimant stated that she never received word from a representative of employer that she'd been terminated, but she had a friend who was not in a managerial position that told her she was terminated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because failing to continue to stay in contact with employer concerning her illness.

Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* Claimant falling out of contact with employer occurred according to claimant as a result of claimant being told by a co-worker who was not a manager that she was being discharged. Claimant knew to be in contact with employer and could have simply gone to employer or called someone to see if the rumor was correct. Instead, claimant did nothing to find out if the information she'd received was correct.

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.* Here, claimant was incorrect or changed her story on a great many of the facts she gave to the administrative law judge. As a result of this, claimant's testimony is not given great weight. As employer's testimony is deemed more credible, it is believed claimant went three days of not calling into or showing up for work, and employer interpreted this as a voluntary quit without good cause attributable to employer.

DECISION:

The decision of the representative dated January 14, 2019, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn