

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

AARON L REYNOLDS
Claimant

APPEAL 22A-UI-13942-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COTTON GALLERY LTD
Employer

**OC: 05/15/22
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant, Aaron L Reynolds, filed an appeal from the June 6, 2022, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary resignation. The parties were properly notified about the hearing. A telephone hearing was held on July 27, 2022. The claimant participated and testified. The employer participated through Owner Tim Loesche. Official notice was taken of the agency records.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

Whether the claimant was able and available for work after his separation from employment?

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 reclaim room specialist from September 2020, until he was separated from employment on May 4, 2022, when he quit. The claimant's schedule was from 6:30 a.m. to 3:00 p.m. Monday through Friday. His immediate supervisor was General Manager of Production Dave Martenson.

The employer has an employee handbook that contains an attendance policy. The attendance policy states that vacation is to be scheduled in advance. If someone requests personal time or sick time for an anticipated absence, they are to inform Mr. Martenson as soon as possible, but the policy states 24 hours in advance. The claimant acknowledged receipt of the attendance policy.

On May 3, 2022, the claimant sent a text message to his supervisor Mr. Martenson that he had court that morning, but he would be at work by 11:00 a.m. The claimant reported to work at that time. Mr. Martenson informed the claimant that he needed to let him know well in advance of

his shifts before he had another anticipated absence. The claimant believed Mr. Martenson's common sense reaction to this constituted hostile behavior on his part and took it personally.

On May 4, 2022, the claimant did not arrive at work or let anyone know where he was. Unbeknownst to the employer, the claimant had decided to take a camping trip beginning that morning and ending after his shift on May 7, 2022. At 6:43 a.m., Mr. Martenson sent a text message to the claimant's phone asking, "Where are you?" The claimant did not respond to the message. At 9:00 a.m., Mr. Martenson sent another text message to the claimant asking, "Hello?" At 11:25 a.m., Mr. Martenson sent a text message to the claimant saying, "Hello." The claimant did not respond.

On May 5, 2022, the claimant did not arrive at work or let anyone know where he was. Mr. Martenson sent a text message at 7:12 a.m. stating, "Hello." The claimant did not respond to this text message. At 3:13 p.m., Co-Owner Chris Loesche sent a text message to the claimant, "Where you at?" The claimant did not respond.

On May 6, 2022, the claimant did not arrive at work or let anyone know where he was. Tim Reynolds, the claimant's father, called Co-Owner Tim Loesche and asked him where he was. Mr. Loesche told Tim Reynolds he did not know.

On May 7, 2022, Tim Reynolds informed Chris Loesche that they had discovered the claimant had been camping. Tim Reynolds informed Chris Loesche that the claimant intended to return to work on Monday. Chris Loesche told Tim Reynolds that the employer would let him know if the claimant could return to work.

On May 9, 2022, Tim Loesche informed Tim Reynolds that the claimant would be terminated due to his attendance.

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.

Iowa Code section 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 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:

(25) The claimant left to take a vacation.

The 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).

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.*

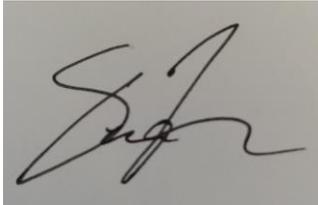
After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer’s testimony more credibility.

Much of the hearing record was spent regarding whether the claimant called prior to each shift. The administrative law judge has made findings in the employer’s favor regarding credibility because Mr. Loesche had specific dates, times and phone numbers for each contact. Ultimately, the administrative law judge finds such credibility determinations to be unnecessary because the claimant concedes he assumed his vacation was approved and left without obtaining approval. Such actions constitute actions on the part of the claimant to sever his employment.

While claimant’s leaving 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 are denied.

DECISION:

The June 6, 2022, (reference 01) unemployment insurance decision is AFFIRMED. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

October 26, 2022
Decision Dated and Mailed

smn/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.