

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KERRY L GUY
Claimant

SIMPLY ESSENTIALS LLC
Employer

APPEAL 18A-UI-03945-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/21/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Kerry L. Guy (claimant) filed an appeal from the March 28, 2018, reference 04, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit work with Simply Essentials, LLC (employer) when he refused to continue working. The parties were properly notified about the hearing. A telephone hearing was held on April 23, 2018. The claimant participated. The employer participated through HR Generalist Nancy Umsted. No exhibits were offered into the record.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the 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: The claimant was employed full-time as a Deboner beginning on February 21, 2018, and was separated from employment on March 14, 2018. The employer is located in Charles City, Iowa and the claimant lives in Waterloo, Iowa. The claimant does not have the ability to drive and relied on another person to get him to and from work. The employer has an attendance policy stating it will issue progressive discipline and after seven absences an employee can be subject to discharge. It also has a policy stating two no-call/no-show absences will be considered a voluntary quit.

The claimant missed work on February 23, 2018, because he did not have a ride to work. He notified the employer of his absence prior to the start of his shift. The claimant left work early on March 2, 2018 because his ride left early. The claimant received permission before leaving his shift. The claimant missed work on March 3, 2018, because he did not have a ride. He notified the employer of his absence.

On March 5, 2018, the claimant went to the employer's facility to submit documents related to upcoming absences for a medical appointment and court dates. He did not clock in or report for work as he had to meet with his attorney to discuss the upcoming court dates. The claimant missed work on March 7, 2018, because he did not have a ride. He notified the employer of his absence. On March 8, 2018, the claimant missed work due to a medical procedure. He obtained prior approval from his supervisor to miss work that day.

The claimant missed work on March 9, 2018, because he did not have a ride. He notified the employer of his absence prior to the start of his shift. That day, the claimant contacted the employer to ask about his point status as he could not access his points on the phone application. He was told by the person who answered the phone that he had enough points that his employment could be terminated. He was not notified at that time that he was, in fact, discharged.

The claimant did not report to work or notify the employer of his absences on March 12 and 13, 2018. The claimant did not report to work on March 14, 2018 and the employer considered him to have voluntarily quit at that point due to its no-call/no-show policy. The claimant reactivated his claim for unemployment insurance benefits and notices of a fact-finding interview were mailed to the parties on March 15, 2018. Once the parties received the notices, the claimant contacted HR Generalist Nancy Umsted to determine the status of his employment. She informed him that the company believed him to have voluntarily quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily quit his employment without good cause attributable to the employer. Benefits are denied.

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 provides, in relevant part:

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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

...

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

...

(27) The claimant left rather than perform the assigned work as instructed.

...

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

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 and his assumption of having been fired was erroneous, his failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The March 28, 2018, reference 04, unemployment insurance decision is affirmed. The claimant voluntarily left the 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn