

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CLETUS E BONES

Claimant

FRONTIER MGMT CORP

Employer

APPEAL 15A-UI-10860-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/15

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 22, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on October 13, 2015. The claimant participated personally. The employer participated through Paul Inskeep, Chef. Emily Clayton was an observer. No documents were offered or admitted into evidence.

ISSUE:

Did the claimant voluntarily quit the employment with 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 chef and was separated from employment on July 16, 2015.

The claimant last performed work on July 8, 2015. On July 7, the claimant requested last minute permission to be off work for his scheduled shifts on July 9, 10 and 11. The claimant was granted permission by Mr. Inskeep. On July 12 and 13, the claimant was not scheduled to work. On July 14, 15 and 16, the claimant did not return to his shifts, or alternately, notify his employer by calling off four hours in advance and finding a replacement for his shift, in accordance with the employer's policies. The claimant stayed in Chicago longer than he had approved time off. After three days of no-call/no-show, the claimant was deemed to have separated, per the employer's policy. Prior to separation, the claimant had previously issued written disciplinary action when he once before did not return from a trip to Chicago on time.

The claimant asserted at the hearing he made attempts to reach the employer by phone and by text message, but no message or contact was had by Mr. Inskeep with the claimant following his July 8 shift until over a month later, when the claimant inquired about returning to his position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

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 § 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 § 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.

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 claimant was granted permission to be off work on July 9, 10 and 11. The claimant was then not scheduled to work July 12 and 13 as his customary days off. The claimant failed to return to work or alternately properly call off his shifts on July 14, 15, and 16. The administrative law judge was not persuaded that the claimant made reasonable steps to timely notify his employer of his extended absence due to missing his bus. The claimant had previously been issued disciplinary action in June 2015, when he failed to return from a similar trip to Chicago on time. 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. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

DECISION:

The September 22, 2015, (reference 01) 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css