

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JORDYNE LOCKHART
Claimant

PETSEL VENTURES LLC
Employer

APPEAL 16R-UI-07923-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/13/16
Claimant: Respondent (4)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the May 23, 2016, (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 9, 2016. Claimant participated. Employer participated through owner Denise Petsel and general manager Keith Rohfls.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a bartender from October 14, 2015, and was separated from employment on March 13, 2016, when he quit.

The last day claimant worked for the employer was February 13, 2016. Claimant was scheduled to work on February 14 and 15, 2016, but he did not work either day. Claimant did not contact the employer about his absences on February 14 and 15, 2016. Prior to February 16, 2016, claimant had told the employer he had surgery on February 16, 2016 and he

would be unable to work for approximately six weeks after the surgery. Claimant needed surgery due to an injury that did not occur while working for the employer (PETSEL VENTURES LLC). Claimant did not provide the employer a note from his doctor that advised him not to work prior to his surgery.

After claimant's surgery, he next contacted the employer on March 8, 2016 when he came to the employer to pick up his paycheck. When claimant picked up his paycheck, he spoke to Mr. Rohfls. Mr. Rohfls did not tell claimant he was discharged. Mr. Rohfls asked claimant why he did not work on February 14 and 15, 2016. Claimant stated he was admitted into the hospital early. Mr. Rohfls requested that claimant provide a doctor's note with a full release to return to work before the employer would allow him to return to work. Claimant told Mr. Rohfls that he thought it would be another three weeks before he was able to return to work. On approximately April 2, 2016, Iowa Workforce Development (IWD) sent the employer an exhibit that claimant had been released by his doctor to work on March 13, 2016. The doctor's note was dated March 30, 2016.

There was work available for claimant had he provided a doctor's note that he was released to work with no restrictions. The employer did not have light duty work available for claimant.

No one from the employer told claimant he was discharged. Ms. Petsel and Mr. Rohfls have the authority to discharge employees. On March 8, 2016, Mr. Rohfls requested claimant to bring in a release to work, but did not discharge him. Claimant did not contact the employer after March 8, 2016.

The administrative record shows that claimant has not requalified for benefits since this separation but reflects he appears to be otherwise monetarily eligible for benefits after this part-time employer's wages are excluded from the base period.

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, and has not requalified but appears to be otherwise monetarily eligible.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's 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*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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).

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. Prior to February 16, 2016, claimant notified the employer of his surgery on February 16, 2016. Claimant was scheduled to work on February 14 and 15, 2016, but did not work either day and failed to contact the employer regarding his absences. Prior to March 8, 2016, claimant's last communication with the employer was on February 13, 2016. On March 8, 2016, claimant went to the employer to pick up his paycheck. Claimant's argument that he was discharged on March 8, 2016 is not persuasive. While claimant was at the employer, he spoke to Mr. Rohfls. Claimant explained to Mr. Rohfls the reason for his absences on February 14 and 15, 2016. Mr. Rohfls requested claimant provide the employer a doctor's note. Mr. Rohfls further requested that claimant provide the employer a note from his doctor releasing him to return to work with no restrictions. The employer did not have any light duty work for claimant and his injury was not related to his employment with the employer. The employer did have work available for claimant once he was released to return to work with no restrictions. Claimant told Mr. Rohfls that he thought it would be three more weeks (the end of March 2016) before he was able to return to work. Claimant failed to contact the employer after March 8, 2016 even though he was released to return to work on March 13, 2016.

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. Although the employer may have held claimant's job and was waiting on claimant's medical release to return to work with no

restrictions, it can be reasonably concluded that claimant did not intend to return to work. After claimant was released to return to work with no restrictions by his doctor effective March 13, 2016, he did not provide the release to the employer and he did not return to work at this time. Claimant's leaving the employment without notice or reason, and the failure to return to work after he was released by his doctor renders the separation job abandonment without good cause attributable to the employer. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law.

Iowa Code § 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)g.

Inasmuch as claimant quit without good cause attributable to the employer, the separation is disqualifying. However, claimant has not requalified for benefits since the separation, but appears to be otherwise monetarily eligible according to base period wages. Benefits are allowed, provided claimant is otherwise eligible. The account of this employer (PETSEL VENTURES LLC, account number 319410-000) shall not be charged.

DECISION:

The May 23, 2016, (reference 04) unemployment insurance decision is modified in favor of the appellant. Claimant voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but appears to be otherwise monetarily eligible. Benefits are allowed, provided claimant is otherwise eligible. The account of this employer (PETSEL VENTURES LLC, account number 319410-000) shall not be charged.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs