

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDI K SMITH
Claimant

MIDLAND NATIONAL LIFE INS CO
Employer

APPEAL 18A-UI-10311-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/09/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 2, 2018, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on October 29, 2018. Claimant participated and testified. Employer participated through Human Resource Consultant Kristin Percival and witnesses Cassie Miller and Jessica Farmer.

ISSUE:

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?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 2, 2013. Claimant last worked as a full-time customer contact specialist. Claimant was separated from employment on September 13, 2018, when she voluntarily quit.

Claimant was approved for intermittent FMLA for a chronic back condition. The leave approved claimant to take two to three days off at a time, up to four times per month. The last day claimant worked was August 13, 2018. On August 15, 2018, claimant was sent a letter asking for updated medical documentation to justify her absences, as she had exceeded her approved leave previously in July and was approaching the maximum leave for August. When the employer had not received the requested documentation by August 24, a second letter was sent, this time giving a deadline of August 31. The letter specifically stated it needed documentation to justify claimant's absence from August 16 forward, as she exceeded her leave on August 16. On August 30, Farmer left a voicemail for claimant asking her to return her call to discuss her reasons for being out and what was needed for her to return to work. Claimant

called in on August 31 and left a message indicating she would not be in that day, but did not make further attempt to make contact with Farmer.

On September 4, 2018, when the employer had still not received the necessary documentation from claimant, a final notice was sent. The next day, September 5, Farmer followed up with another voicemail. The voicemail informed claimant that her FMLA leave had not been approved due to lack of clarifying documentation and they needed to discuss a return to work date. The voicemail instructed claimant to return the call by the close of business that day. When the employer did not hear from claimant a third voicemail was left by Farmer on September 6. This voicemail warned that if claimant did not return the call by the end of the day, it would be assumed that she was resigning. Claimant did not get this voicemail until after close of business on September 6. Claimant called back on September 7 and left a voicemail from Farmer saying she had some things going on, including a potentially new medical issue, and therefore did not have an estimated return to work date. She indicated she understood if the employer needed to separate her from employment. Upon receiving the voicemail Farmer called claimant back and left a message giving her until September 10 to submit documents justifying her absence. Claimant testified she did not receive this message and stopped calling in to report her absences, assuming she had been separated. When the employer had not heard from claimant by September 13, 2018, Farmer called and left a message for claimant informing her she had been separated from employment.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). 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. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 version of events to be more credible than the claimant's recollection of those events.

Claimant was given notice in writing by the employer that she should contact them regarding her work status. Letters were mailed to claimant on August 15, August 24, and September 4, 2018, asking for additional documentation regarding her absence. The employer attempted to call claimant in regards to this information as well on August 30, September 5, and September 6, 2018. Claimant was specifically advised that if the employer did not hear from her by close of business on September 6, the employment relationship would end. On September 7 the deadline was extended to September 10. Claimant did not contact the employer or provide it with additional documentation as instructed. 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. Since claimant did not follow up with the employer regarding her ability to return to work, her failure to continue reporting to work, or to otherwise maintain contact with the employer was an abandonment of the job. Benefits are denied.

DECISION:

The October 2, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs