

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAMELA A BEHRENS
Claimant

CEDAR RAPIDS COMM SCHOOL DIST
Employer

APPEAL 15A-UI-12757-JP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/25/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 10, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 7, 2015. Claimant participated. Employer participated through lead human resources specialist, Sue Wilber. Claimant exhibit A was admitted into evidence with no objection.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge 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 was employed part time as a bus attendant from August 11, 2015, and was separated from employment on October 15, 2015, when she quit.

The employer requires employees to notify it if they are going to be absent every day prior to the start of their shift. The employer has a three-day no-call/no-show policy. If an employee is absent three consecutive workdays as a no-call/no-show it is deemed a voluntary quit. The employer prefers calling, but needs some sort of communication if an employee is going to be absent.

The employer was aware that claimant was having reactions to her medication prior to October 21, 2015. On October 21, 2015, Ms. Wilber spoke with claimant on the phone. Claimant had had multiple absences. Ms. Wilber told claimant she needed to communicate prior to being absent on a daily basis. Ms. Wilber told claimant about the no-call/no-show policy and the call-in policy. Claimant spoke about the medication she was on and that she cannot work. Claimant told Ms. Wilber to contact her doctor's office. Ms. Wilber did not tell claimant

she was discharged. Ms. Wilber did not tell claimant they had deemed her to have voluntarily quit. Ms. Wilber did tell claimant she needed to get the employer a doctor's note.

On October 22, 2015, Ms. Wilber spoke to claimant's doctor's office. The doctor's office said claimant's doctor was out. The doctor's office had tried to send claimant to a different doctor, but claimant refused to go. The doctor's office said that there was not a current note that precluded claimant from working. The doctor's office said people work on the medicine claimant was taking. The doctor's office said claimant could be around kids. Ms. Wilber spoke with the doctor's office staff.

Claimant failed to report for work or notify the employer of her absences for three consecutive scheduled workdays on October 22, 23, and 26, 2015 in violation of the employer's policy. On October 22, 2015, claimant was scheduled to work. Claimant was absent. Claimant did not call the employer. The employer did not attempt to contact claimant. On October 23, 2015, claimant was scheduled to work. Claimant was absent. Claimant did not call the employer. The employer did not attempt to contact claimant. On October 26, 2015, claimant was scheduled to work. Claimant was absent. Claimant did not call the employer. The employer did not attempt to contact claimant. The employer initiated a letter to claimant on October 26, 2015 after her shifts were over. Claimant Exhibit A. Ms. Wilber initiated the letter prior to receiving any e-mail from claimant on October 26, 2015. Ms. Wilber did not get claimant's e-mail until October 27, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer. Benefits are denied.

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 reviewed the exhibit submitted. 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(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.

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). 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. It is clear that claimant was having issues with her medication. Claimant Exhibit A. Prior to October 22, 2015, claimant had communicated with the employer when she was going to be absent from work. However, claimant failed to report for work or notify the employer of her absences for three consecutive scheduled workdays on October 22, 23, and 26, 2015 in violation of the employer's policy. Even though claimant was still having issues with her medication, she still needed to properly communicate her absences to the employer. On October 21, 2015, Ms. Wilber did explain to claimant that she needed to call in on a daily basis if she was going to be absent. Ms. Wilber also reminded claimant about the no-call/no-show policy. Claimant's argument that she thought she was discharged per the no-call/no-show policy on October 21, 2015 is not persuasive. Ms. Wilber never told claimant she was discharged. Furthermore, claimant never followed up with Ms. Wilber or the employer until after she had three consecutive no-call/no-shows and deemed to have quit. 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 claimant did not follow up with the employer and her assumption of having been fired was erroneous, her failure to continue reporting to work was an abandonment of the job.

Because claimant had three consecutive no-call/no-show absences as required by the rule and in accordance with the employer's policy, her separation is considered job abandonment, not a discharge. 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 November 10, 2015, (reference 01), decision is affirmed. The claimant voluntarily left 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css