

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEVIN K BENNETT
Claimant

**JENNIE EDMUNDSON MEMORIAL
HOSPITAL**
Employer

APPEAL NO. 23A-UI-09894-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/17/23
Claimant: Appellant (1)**

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 13, 2023, (reference 02) which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 3, 2023. Claimant participated personally. Employer participated by Vanessa Crouse and Tamara Cole. Employer's Exhibits 1-5 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant voluntarily quit with good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 5, 2023. Claimant voluntarily quit on that date as he was asked to submit to drug and alcohol testing as a result of reasonable suspicion of claimant being under the influence while at work.

Claimant worked as a full time patient access professional for employer. Claimant stated that his father passed away earlier in the week, and he was sorrowful and drinking on September 4, 2023. He stated he drank more than normal, but stopped drinking at midnight on September 4, 2023. Claimant arrived at work at 6am on September 5, 2023. Claimant acknowledged that he probably shouldn't have gone to work on that day, but stated he does not miss work.

Very shortly after claimant arrived at work, coworkers began to express concern regarding claimant's sobriety – or lack thereof. When claimant's supervisor arrived at the office, she'd already received multiple messages of concern from coworkers. She immediately brought claimant into her office. After seeing and speaking with him she noticed slurring of speech, watery eyes, not being able to maintain attention, and falling asleep. She then stated that claimant was being asked to take a drug and alcohol test. Claimant refused the testing.

Employer then called in an administrative coordinator to help explain to claimant that if he did test, they could get him help if the test was positive. Alternatively, employer could get claimant help if claimant were to confess to being intoxicated. Claimant refused to do testing or to admit to usage and said he was going home. Employer expressed that his refusal to test could lead to a termination. Claimant then indicated that he quit. Employer would not let claimant drive himself home as a result of his state of intoxication.

Claimant stated that the administrator was never called into the office as she worked in a different part of the building. He further stated that no one ever told him what would happen if he refused to test. Claimant stated that he was simply told to go home when he went to his supervisor's office. He then got up and went home.

REASONING AND CONCLUSIONS OF LAW:

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 Ct. 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*, 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. *State v. Holtz*, Id. In this matter, claimant offered testimony that was not believable. This may be because of his state of intoxication when he went to work. But his statement that the administrator did not ever come to the office of the supervisor indicates a person who may have blacked out while he was at work, thereby tainting or eliminating his memory of the events. For this reason, claimant's recollection of the specific events that occurred on September 5, 2023 are not given equal credence to employer's version of the events.

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.

The claimant was never presented with documents surrounding reasonable suspicion testing for intoxicant while at work. As claimant announced his quit shortly after the arrival of the administrative coordinator, said coordinator may not have had time to present the documents.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because employer asked for claimant to either submit to reasonable suspicion drug and alcohol testing or admit to being under the influence of intoxicants.

DECISION:

The decision of the representative dated October 13, 2023, (reference 02) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections & Appeals

November 6, 2023
Decision Dated and Mailed

BAB/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.