

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES R BATTON

Claimant

APPEAL 16A-UI-07303-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAKE SHORE TRAM INC

Employer

OC: 06/05/16

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 24, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2016. Claimant participated. Employer participated through officer manager Carrie Warmbier and office manager Tam Haack.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a welder/part fabricator/painter from September 8, 2014, and was separated from employment on June 10, 2016.

The employer has a written no-call/no-show policy in the employee handbook. If an employee has three consecutive days of no-call/no-shows it is considered job abandonment and a voluntary quit. The employee handbook was created on October 27, 2015. The employer updated the employee handbook in May 2016. When the employee handbook was updated in May 2016, nothing was changed to the no-call/no-show policy from October 27, 2015. Claimant was given a copy of the updated handbook the week of May 23, 2016, which included the no-call/no-show policy. After receiving the handbook, claimant did not sign the acknowledgment for the handbook. If an employee is going to miss work, they are to notify the employer.

Claimant failed to report for work or notify the employer of his absences for three consecutive scheduled workdays on June 8, 9, and 10, 2016, in violation of the employer's policy. Claimant was scheduled to work on June 8, 9, and 10, 2016. Claimant did not contact the employer on any of those days. On June 13, 2016, claimant did not show up for his scheduled shift and the employer determined he was not coming back to work.

Claimant had no prior warnings for absences or no-call/no-shows. On May 19 and 20, 2016, claimant was scheduled to work, but he was a no-call/no-show for both days. Claimant did return to work on Monday, May 23, 2016.

On June 7, 2016, the employer asked claimant to work on some track. The jig claimant was going to use was not functioning correctly and he had to lift the track up to the jig. This was one of claimant's regular duties. The track weighed approximately 80 pounds. Claimant did not want to do the work because he thought it was going to irritate his back. Claimant had returned from work comp leave on May 2, 2016 with a work injury related report that stated that he was medically fit to return to work with regular duties. On June 7, 2016, claimant was under no work restrictions or doctor's note. Claimant had discussed with the employer about rebuilding the jig so the track could just be rolled over as opposed to having to pick it up each time. The jig was still useable as it was. Claimant had lifted the track by himself before, but it is difficult to do. Claimant testified he then quit on June 7, 2016, effective immediately, but did not tell anyone with the employer that he was quitting.

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. 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 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 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:

(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). 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. Claimant was scheduled to work on June 8, 9, and 10, 2016. Claimant did not report to work on June 8, 9, and 10, 2016. Claimant also did not contact the employer and report his absences on June 8, 9, and 10, 2016. Inasmuch as claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are denied.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

In the alternative, if claimant is found to have separated from employment on June 7, 2016, prior to his three days of no-call/no-shows (June 8, 9, and 10, 2016), he still voluntarily left the employment without good cause attributable to the employer. On June 7, 2016, the employer requested claimant to perform his regular job duties. Claimant was under no medical or work restrictions on June 7, 2016. Claimant had been given a work injury related report that stated he was medically fit to return to work with regular duties on May 2, 2016. Claimant has failed to meet his burden of proof that the voluntary leaving was for good cause attributable to the employer. Benefits are denied.

DECISION:

The June 24, 2016, (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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs