

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DALE L BAHRENFUSS
Claimant

KASTIM CORPORATION
Employer

APPEAL 18A-UI-11229-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/28/18
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin r. 871-24.25 – Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

Dale Bahrenfuss, Claimant, filed an appeal from the November 13, 2018 (reference 02) unemployment insurance decision that denied benefits because he voluntarily quit work with Kastim Corporation for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on December 3, 2018 at 11:00 a.m. Claimant participated. Employer participated through Miranda Stone, Office Manager, and Lori Mullen, General Manager. Natasha Grady participated as a witness for claimant. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a voluntary quit without good cause attributable to the 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 cook from January 15, 2018 until his employment with Kastim Corporation d/b/a McDonald's ended on August 25, 2018. (Mullen Testimony) Claimant last worked on August 5, 2018. (Mullin Testimony) After claimant's last shift, Natasha Grady, acting on claimant's behalf, called and informed employer that claimant had a family emergency and claimant would contact employer when he was able to return to work. (Grady Testimony) Later that evening or the next day, claimant called the store and spoke to the night manager, whose name claimant cannot remember. (Claimant Testimony) Claimant told the night manager that he needed a leave of absence and would call employer when claimant was able to work again. (Claimant Testimony) Claimant was scheduled to work the weeks of August 5, 2018 and August 12, 2018. (Stone Testimony) Claimant was scheduled to work August 8 – 11, 2018, but did not report for his shifts or notify employer that he would be absent. (Mullen Testimony) Claimant next contacted employer on August 25, 2018 by sending a text message to the general manager informing her that claimant was able to return to work. (Claimant Testimony) Claimant also told employer that the family emergency only lasted one day and claimant was in

jail for the remaining time he was absent from work. (Mullen Testimony) During the hearing, claimant denied being incarcerated at any time between August 5, 2018 and August 25, 2018. (Claimant Testimony) Employer considered claimant to have voluntarily quit for being absent for three shifts without giving notice in violation of company rule. (Mullen Testimony)

Employer has a policy regarding leaves of absence. (Mullen Testimony) The policy states that the employee is to request a leave of absence from the general manager. (Mullen Testimony) Employer also has a policy that three absences without notice are considered a voluntarily quit by the employee. (Mullen Testimony) These policies are included in the online employee handbook. (Mullen Testimony) Claimant signed an acknowledgment of receiving the handbook on January 17, 2018. (Mullen Testimony)

Claimant has the general manager's cellular telephone number and has texted the general manager in the past. (Mullen Testimony) Claimant did not contact the general manager between August 5, 2018 and August 25, 2018. (Mullen Testimony) Claimant did not receive permission to take a leave of absence. (Mullen Testimony) Claimant has taken time off of work in the past due to family emergencies. (Claimant Testimony; Mullen Testimony) Claimant notified employer of these absences, which lasted a day each. (Mullen Testimony) There was continuing work available to claimant; claimant's job was not in jeopardy. (Mullen Testimony)

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(1) provides: "An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The claimant has the burden of proving that a voluntary quit pursuant to Iowa Code § 96.5, subsection 1, was for good cause attributable to the employer. Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.25(4), (23) 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.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

Iowa Admin. Code r. 871-24.26(8) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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.*

I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's version of events to be more credible than the claimant's recollection of those events. Claimant could not provide the date that he last worked, the date or name of the manager he informed of his personal emergency, or the date he next contacted the employer. In contrast, employer provided detailed information about claimant's last day of work and the date of claimant's next contact with employer. Claimant alleges that he was never informed of the leave of absence policy and was never required to read the handbook. Employer credibly testified that claimant signed an acknowledgment of receipt of the handbook, provided the date claimant signed the acknowledgment and established that employees are not permitted to begin working until they sign an acknowledgment. Furthermore, employer credibly testified that claimant stated he was in jail for a portion of his leave. Claimant denied that he was in jail for that period of time. The only explanation claimant could provide for employer's testimony about his incarceration was that employer was confused. Employer provided detailed information that claimant himself was unable to provide; employer's testimony did not indicate confusion on its part. Employer also credibly testified that claimant's prior excused absences lasted a day, whereas this absence lasted 20 days without any communication from claimant.

Claimant voluntarily quit his job by failing to appear for work for three days without notice to employer in violation of employer's policy of which claimant was or should have been aware. Claimant's absence was not solely for the purpose of caring for a sick family member. Claimant did not provide appropriate notice of his absence to his employer or seek or obtain approval for a leave of absence per the employer's policy. Claimant has not met his burden of proving good cause attributable to his employer. Claimant voluntarily quit without good cause attributable to his employer. Benefits are denied.

DECISION:

The November 13, 2018 (reference 02) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs