

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNETH K HOMAN
Claimant

VON MAUR INC
Employer

APPEAL 16A-UI-05562-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/27/16
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 May 9, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on June 2, 2016. The claimant, Kenneth Homan, participated and testified. The employer, Von Maur Inc., participated through human resource manager, Dawn Shaw, and department manager, Becky Shirlaw.

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 was employed full time as a second shift fulfillment associate from September 29, 2015, until this employment ended on January 20, 2016, when he was deemed to have voluntarily quit.

Claimant testified that he went to work as scheduled on January 18, 2016. Accordingly to claimant, when he tried to enter the building by inputting his code into the keypad on the door he could not get in. Claimant stated he then called his supervisor, Shirlaw, who told him he no longer worked there. Claimant testified when he asked why, Shirlaw directed him to human resources. According to claimant, when he called Shaw in the human resources department she did not answer, so he left her a message, though he could not recall exactly what the message said. Claimant did not hear back from Shaw. Claimant testified he tried calling either Shaw or Shirlaw once more and again left a voicemail, but did not hear anything back. Claimant did not continue to report to work as he believed his employment had been terminated.

Shaw testified that claimant was scheduled to work January 18, 2016, but did not show up for his shift. Shirlaw testified she did not see or talk to claimant on January 18, or anytime thereafter. According to Shaw, when claimant did not show up for work she called and left a

message for him informing him that he had missed a scheduled shift. Claimant denied he ever received such a message. Claimant did not show up to work again on January 19 or 20, 2016. After three consecutive days of being a no-call/no-show claimant was deemed to have voluntarily quit. This decision was based on the employer's policies, though Shaw testified that this policy is not distributed to employees, but is internal to the payroll department.

According to Shaw's testimony she did not see or hear from claimant again after his last shift on January 15, 2016. Shaw testified her phone and voicemail were working on January 18 and she received several voice messages. Both Shaw and Shirlaw denied receiving any messages from claimant on January 18 or any day thereafter. Shaw testified that if an employee is terminated, she generally informs the employee of this decision in person. Both Shaw and Shirlaw testified that Shirlaw would not be responsible for informing someone they were terminated.

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.

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.

The decision in this case rests, at least in part, on the credibility of the parties. 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.*

Claimant testified he stopped coming to work because he was notified by Shirlaw, on January 18, 2016, that he was no longer an employee. Claimant claimed to have called Shaw to follow up with her about this decision, but could not recall what he said in a message left for her. Claimant testified he made a second call after not hearing anything, but could not remember if that call was to Shaw or Shirlaw. Shirlaw denied speaking to claimant on January 18 or telling him he had been terminated. Both Shaw and Shirlaw testified Shirlaw would not tell someone if they had been terminated. Both also testified they did not receive any voicemails from claimant on or after January 18 and they did not hear from him again after his January 15 shift.

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, 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 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. The employer deemed claimant to have voluntarily quit under its policies after he was a no-call/no-show for three consecutive days. The employer did not make claimant aware of this policy at any time during his employment. Since the employer does not have a policy as set out in Iowa Admin. Code r. 871-24.25(4), the separation was not due to failure to call or report for three days. However, the employer has provided credible evidence that claimant did not return to work again or make contact with the employer after January 15, 2016. Claimant's leaving the employment without notice or reason, and the failure to return to work renders the separation job abandonment without good cause attributable to the employer.

DECISION:

The May 9, 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs