

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID A SWIM
Claimant

CLIMATE ENGRS OF DES MOINES INC
Employer

APPEAL 17A-UI-05612-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/09/17
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 15, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 13, 2017. Claimant participated. Employer participated through owner William Johnson. Claimant Exhibit A was admitted into the record with no objection.

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 sheet metal worker from November 16, 2016, and was separated from employment on March 16, 2017.

The employer requires employees to call the employer prior to the start of their shift if they are going to be absent. Claimant was aware of the procedure.

On March 16, 2017, claimant's was working his scheduled shift. Around noon, claimant picked up his tools and left the employer. Claimant testified he told an apprentice he was leaving early because he was sick. Claimant was a journeyman and an apprentice would work with him. Mr. Johnson testified claimant left without telling anyone. Claimant's supervisor was in the office when he left, but he did not go into the office to tell his supervisor he was leaving. The employer also has a secretary in the office, but claimant did not inform the secretary he was leaving early. After the employer noticed claimant was gone, claimant's supervisor attempted to

contact claimant by phone several times, but the supervisor was unsuccessful. After the employer was unsuccessful in reaching claimant, the employer sent a Sheet Metal Contractors of Iowa Labor Relations Employee Record to claimant, the union hall, and the contractor's association. Claimant Exhibit A. Mr. Johnson testified that the employer incorrectly filled out the Sheet Metal Contractors of Iowa Labor Relations Employee Record. Mr. Johnson testified the employer should have selected the option "Failure to Report" under the "Resignation/voluntary quit" section. Claimant Exhibit A. Around 5:00 p.m. or 6:00 p.m. on March 16, 2017, claimant testified that he discovered he had received some text messages from his brother. Claimant's brother works for the employer and is considered a coworker, not a supervisor. Claimant testified his brother had sent him text messages asking where he was at. Claimant also testified his brother sent him a text message that he was being laid off. Mr. Johnson testified he is not aware of anyone telling claimant's brother that claimant was being laid off. Claimant did not contact the employer after he discovered these text messages. Claimant's brother did not have the authority to discharge claimant.

On March 17, 2017, claimant testified he called his brother and told him to pick up his paycheck. On March 17, 2017, the employer attempted to send claimant his last paycheck and the Sheet Metal Contractors of Iowa Labor Relations Employee Record to him, but it came back undeliverable. The employer attempted to contact claimant multiple times after March 16, 2017, but was unsuccessful. On March 27, 2017, the employer gave claimant's last paycheck and the Sheet Metal Contractors of Iowa Labor Relations Employee Record to claimant's brother to be delivered.

The employer had work available for claimant after March 16, 2017. Claimant did not contact the employer after he left work on March 16, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to 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 section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. *Discharge for misconduct.* If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Code section 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.

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. On March 16, 2017, claimant left work before the end of his shift without notifying his supervisor or anyone in the office. Although claimant may have notified an apprentice, the apprentice does not have the authority to approve any absences. Furthermore, claimant failed to contact the employer after he left on March 16, 2017. Although claimant's brother may have informed him that he was laid off, his brother did not have any supervisory authority over claimant and claimant did not contact the employer to confirm the accuracy of the information. 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. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). Since claimant did not follow up with management personnel or the owner, and his assumption of having been fired was erroneous, his failure to continue reporting to work was an abandonment of the job.

Claimant's leaving the employment and the failure to return to work renders the separation job abandonment without good cause attributable to the employer. While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The May 15, 2017, (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 claimant 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/rvs