

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RANDY HARMAN
Claimant

**AMERICAN MARKETING & PUBLISHING
LLC**
Employer

APPEAL 15A-UI-12585-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 4, 2015, (reference 03) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on December 2, 2015. The claimant participated personally. The employer participated through Julyne Kenney, human resources. Employer Exhibits One through Three were admitted into evidence.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the 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: The claimant was employed full-time as an outside sales representative and was separated from employment on October 20, 2015, when he tendered his resignation (Employer Exhibit One).

The employer has an internal policy which terminates employment effective of a salesperson's resignation notice, for business reasons. The employer did not pay the claimant through his resignation period of October 30, 2015, or permit him to continue work.

The claimant voluntarily resigned because his expenses exceeded his wage expectations and it was impractical and too costly for him. The claimant was permitted reimbursement for his cell phone up to \$25 per month, and also for gas mileage (Employer Exhibit Three). The claimant received two phone bills related to his cell phone usage at work, which were \$300 and \$400 above his normal bill. The employer testified it has approximately 250 outside sales representatives and was unaware of any other employee with similar issues. The claimant checked with his cell phone carrier, who suggested he use free Wi-Fi when available. The

claimant also talked to his employer but received no resolution. The claimant did not confer with peers or conduct any audit on his usage. The claimant was also unhappy with his gas usage reimbursement, as he believed he accrued \$120 in expenses after reimbursement. The claimant did not notify his employer of any concerns regarding gas before resigning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date.

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 Code § 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 Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

"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 claimant with work issues or grievances must make some effort to provide notice to the employer to give the employer an opportunity to work out whatever issues led to the dissatisfaction. Failure to do so precludes the employer from an opportunity to make adjustments which would alleviate the need to quit. *Denvy v. Board of Review*, 567 Pacific 2d 626 (Utah 1977).

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.*

Based on the evidence presented, the claimant voluntarily quit his job due to his dissatisfaction with his expenses associated with the job conditions. The claimant received two phone bills, for which the employer would pay only \$25 per month, that were \$300 and \$400 above his usual phone expenses. Of 250 employees in a similar role, the employer had no other reports of excessive usage similar to the claimant's use. The claimant made one attempt to talk to his employer about the matter, but did not inquire about his own usage, or talk to peers or seek alternative ways to conduct business without extensive phone use. The employer credibly testified that it is a primarily face-to-face business and therefore the claimant was not expected to rely heavily on his phone, to conduct calls, or to perform demonstrations. The employer also testified that there were printed materials, as well to aid the claimant in his job duties. In addition, the claimant did not bring forth his gas usage concerns prior to resignation. Based on the evidence presented, the claimant has failed to demonstrate he voluntarily quit the employment for good causes under Iowa law.

However, because the claimant was not permitted to work out his resignation period, his discharge on October 20, 2015, was in response to a resignation notice. No misconduct is established. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination, October 20, 2015, until the effective date of the proposed resignation of October 30, 2015.

DECISION:

The November 4, 2015, (reference 03) decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed until October 30, 2015. Thereafter, benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs