

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIEL L KESSLER
Claimant

ROGER'S QUALITY LAWNS LLC
Employer

APPEAL 22A-UI-03819-DG-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/05/21
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 27, 2022, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 14, 2022. Claimant participated. Employer participated by Roger Heider, Owner and Marilyn Heider, Secretary. The administrative law judge took official notice of the administrative record including the fact-finding documents.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 12, 2021. Claimant left the employment and did not return after that date because of personal issues.

Claimant began working for employer as a full-time seasonal employee on March 6, 2017. Employer has written rules and policies. Claimant was given a copy of those rules at the time of hire.

Claimant and the owner were the only two employees that performed lawn care services for the employer's customers. Claimant began having personal issues which prevented him from coming into work beginning in September, 2021. The owner of the company had to work extra hours to make up for the work claimant was not doing.

Claimant stopped coming into work after October 13, 2021. Employer contacted claimant and told him that he was needed at work. Claimant told employer that his divorce and child custody issues were keeping him busy, and he was not able to come into work.

Claimant did not return to work after October 13, 2021. In the fall employer spends a lot of hours laying down lawn chemicals. Employer had full-time work available to claimant after he

stopped coming into work. Finally, on November 2, 2021 employer decided that he could no longer depend on claimant to help with the work. Claimant's employment ended as of that date.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he was dealing with compelling personal issues.

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.

Iowa Admin. Code r. 871-24.25(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

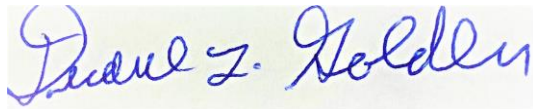
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of 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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Claimant abandoned his employment when he would he refused return to work for over 10 days. 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. Benefits must be denied.

DECISION:

The decision of the representative dated January 27, 2022, (reference 01) is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Duane L. Golden
Administrative Law Judge

March 29, 2022
Decision Dated and Mailed

dlg/mh