

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HANNAH L MCCUE
Claimant

SLB OF IOWA LC
Employer

APPEAL 20A-UI-09405-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The claimant/appellant, Hannah L. McCue, filed an appeal from the August 5, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 23, 2020. The claimant participated. Craig McCue, father of claimant, represented the claimant. The employer, SLB of IOWA LC, participated through Karen Beard.

The administrative law judge took official notice of the administrative records. Claimant Exhibits A, B, and Employer Exhibit 1 were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant quit the employment or was she laid off?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates as a Panera restaurant. The claimant was employed full-time as an associate. She worked on March 21, 2020. On that day, she was given a letter by her manager (see Claimant Exhibit A) which said she was being laid off due to a lack of work. Her managers, Mandy and Keith, also told her she was not going to be working and she interpreted that to mean she had been laid off.

Claimant began new employment at Wal-Mart on April 25, 2020 when she had not been recalled to Panera. Claimant was not able to perform any work between May 9- June 6, 2020 (Claimant Exhibit B).

Claimant permanently separated from employment with Walmart in July. The issue of the claimant's separation has not yet been addressed by the Benefits Bureau. She reapplied to SLB of Iowa LC and resumed work on July 14, 2020.

Employer opined that claimant had tendered a voluntary resignation prior to employees being offered a voluntarily layoff. Claimant denied resigning, verbally or in writing, or being given an option to be laid off versus continue working.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit the employment, but was laid off.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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.* In this case, the claimant presented first-hand testimony, under oath, and was subject to cross-examination. The employer's evidence was based upon hearsay and reports. Ms. Beard did not personally discuss the claimant's employment status with her, and relied upon reporting by managers at the claimant's location,

who did not participate in the hearing. In the absence of any other evidence of equal weight either explaining or contradicting the claimant's testimony, it is held that the weight of evidence is established in favor of the claimant.

On March 21, 2020, the claimant was given a copy of a letter which stated due to a lack of certainty due to COVID-19 and work, that she was being laid off of work. She discontinued reporting because she received the letter and her managers told her she was being laid off. No evidence was presented that the claimant voluntarily quit, intended to quit or agreed to a voluntary layoff. Her separation was initiated by the employer. The employer has failed to establish a disqualifying basis for the separation, which was due to layoff. Therefore, the claimant is allowed benefits, provided she is otherwise eligible.

The following issues delineated in the findings of fact are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination: Whether the claimant was able to and available for work May 9, 2020- June 6, 2020, and the reason for claimant's July 2020 permanent separation with Wal-Mart Inc.

DECISION:

The unemployment insurance decision dated August 5, 2020, (reference 01) is reversed. The claimant was separated due to a layoff. No disqualification is imposed. Claimant is allowed benefits, provided she is otherwise eligible.

REMAND:

The following issues delineated in the findings of fact are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination:

1. Whether the claimant was able to and available for work May 9, 2020- June 6, 2020?
2. The reason for claimant's July 2020 permanent separation with Wal-Mart Inc.



Jennifer L. Beckman
Administrative Law Judge
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September 28, 2020
Decision Dated and Mailed

jlb/mh