

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRIAN R STOVER**  
Claimant

**ACME OIL FIELD SERVICE**  
Employer

**APPEAL 17A-UI-07081-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/04/17**  
**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 July 10, 2017, (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 July 28, 2017. The claimant participated and testified. The employer participated through managing partner Michael Romines.

**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 truck driver/operator/laborer from June 27, 2016, until this employment ended on October 31, 2017, when he voluntarily quit.

Romines testified claimant was a no-call/no-show to work October 26 through 28. The employer has a policy in place which states employees are considered to have voluntarily quit after two to three consecutive no-call/no-shows. Romines testified on October 31, 2016, claimant came in to work two hours past his scheduled start time and spoke to his brother Robert. According to Romines claimant told Robert he was struggling with some family issues, had been using narcotics, and was leaving immediately to go to Hobbs, New Mexico. Romines testified Robert did not say anything about claimant being separated from employment during the conversation, as claimant was indicating he was quitting.

Claimant testified he does not believe he was scheduled to work the last week in October and therefore did not miss any work that week. Claimant admitted that, due to some personal issues, he had used narcotics during the time in question, but testified he was not using them on October 31 and denied they may have affected his memory during this time. Claimant testified

he was two hours late to work on October 31. Claimant initially testified he spoke to Romines upon arriving, but then later acknowledged it might have been Robert. According the claimant Robert or Romines told him he had to let him go, at which point claimant indicated he would go to New Mexico. Claimant testified he did, in fact, drive to his home in Farmington, New Mexico that day.

## **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 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 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:

(2) The claimant moved to a different locality.

...

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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).

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

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 her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

Claimant resigned on October 31, 2017, stating he was going back to New Mexico and the employer accepted this resignation. While claimant's leaving 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 are denied.

**DECISION:**

The July 10, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left his 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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs