IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

KANAAN S YASEEN Claimant **FAWN MANUFACTURING INC** Employer	**APPEAL 17A-UI-09995-JC** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/10/17** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 27, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held in Des Moines, Iowa, on October 18, 2017. The claimant participated personally. The employer participated through Dan Jacobi, corporate counsel/attorney at law. Mark Donahue, plant operations supervisor, testified for the employer. Claimant Exhibits One through Four were received 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.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Was the claimant discharged for disqualifying job-related misconduct?
Is the claimant able to work and available for work effective September 10, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a power coat applicator and was separated from employment on September 8, 2017. The evidence is disputed as to whether the claimant quit his employment or was discharged by the employer.

The claimant began his employment in 2012, and was aware of the employer's attendance and call-in policy if he was unable to work. The claimant was expected to call the employer hotline and leave a message if he was unable to work. The employer applied a no-fault policy to absences that were not accompanied by a doctor's note, so that any absence without a note would result in the accumulation of attendance infraction points. The employer also utilized a step or progressive discipline method to address attendance infractions. The claimant was issued a warning most recently on January 18, 2017 for his attendance. The claimant had also

been on a leave of absence through Family and Medical Leave Act (FMLA) in March 2017, due to a broken leg, which was personal and not a work related injury.

The claimant experienced migraine headaches at the end of his employment.. The claimant last physically worked on August 11, 2017. On August 12, 2017, the claimant properly reported his absence, due to illness. The claimant was then absent from work August 14 through 21, 2017 for a pre-scheduled vacation. On August 22, 2017, the claimant properly reported his absence and furnished a doctor's note. The claimant was then absent August 23 through 30, 2017 and properly reported his absences due to illness. On August 29, 2017, the human resources representative contacted the claimant at home, and jokingly asked "are you dead" when inquiring about his return-to-work status.

The claimant met with the employer on August 30 or 31, 2017. He provided a doctor's note to the human resources representative, excusing him from work through September 1, 2017 (Claimant Exhibit 2). The claimant was then asked by Mr. Donahue, plant operations manager, if he was ready to return to work. The claimant said "No." The claimant was also then told if he was absent for more than three days, he needed to request a leave of absence. The claimant reported that Mr. Donahue told him he was on a "terminated layoff", which he interpreted to mean he was fired. Mr. Donahue denied firing the claimant or laying him off, only stating that he had to either return to work or have approval (through a leave of absence) for time off. The claimant was not given a termination document.

Thereafter, the claimant met with the human resources representative, who provided him a leave of absence form. Together, the form was completed with a retroactive start date of August 22 through September 1, 2017. The form stated if the claimant did not return to work on September 5, 2017 or request an extension, separation of employment may ensue (Claimant Exhibit 1). The claimant signed the form. The human resources officer did not tell or confirm with the claimant he was fired, but instead gave him the required paperwork for FMLA approval for his treating physician to complete. (The claimant had previously completed similar FMLA process for his leg injury in March 2017.) It is unclear why the claimant would be asked to complete his FMLA paperwork if he was in fact discharged in front of the human resources officer, by Mr. Donahue, as alleged. The claimant asserted it was because the human resources officer was new and unfamiliar with how to handle the matter.

The employer expected the claimant to return to work on September 5, 2017 or return the FMLA paperwork. He did not call or report to work on September 5, 6, or 7. On September 8, 2017, the employer completed his separation pursuant to its seniority contract, which states that three no call/no shows will be considered job abandonment. Then, during the week of September 10, 2017, the claimant established his unemployment claim. He stated the delay was due to being on medication during the prior week.

Since his separation from this employment, the claimant continues to rest and take medication for his migraine headaches. He saw his treating physician on September 20, 2017 (Claimant Exhibit 3). He is seeking full-time employment, consistent with his work experience, and has worked part-time at Sam's Club. He has no restrictions to his employability at this time.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, the administrative law judge concludes that the claimant is able to work and available for work.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3. The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). The claimant is seeking full-time employment consistent with his experience and has no restrictions to employability. In this case, the evidence establishes the claimant is able to and available for work as defined by the unemployment insurance law.

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

This case rests on the credibility of the parties. 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*.

Administrative agencies are not bound by the technical rules of evidence. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000). A decision may be based upon evidence that would ordinarily be deemed inadmissible under the rules of evidence, as long as the evidence is not immaterial or irrelevant. *Clark v. Iowa Dep't of Revenue*, 644 N.W.2d 310, 320 (Iowa 2002). Hearsay evidence is admissible at administrative hearings and may constitute substantial evidence. *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995).

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes the employer's testimony to be more credible, and that the employer did not initiate the separation of employment or discharge the claimant on August 31, 2017 by way of Mr. Donahue. The claimant was never provided a document stating he was fired, but rather told he was to complete the FMLA paperwork to cover his continued absences. The employer would not logically ask the claimant to complete a retroactive form for a leave of absence and then ask the claimant to also fill out FMLA paperwork to cover future absences, if he was fired by Mr. Donahue. For these reasons, the administrative law judge concludes the evidence does not support the claimant's assertion that Mr. Donahue fired him.

The next issue is whether the claimant quit the employment for good cause reasons according to Iowa law.

> 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, in pertinent part: 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.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, the 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).

The court in *Reelfs v. EAB*, No. 06-1750 (Iowa App. 6/27/2007) held that absences for more than three consecutive work days without proper notification and authorization shall be presumed to be a quit without good cause. 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. The claimant was made aware of the employer’s contract which had a written policy that no-call/no-shows would result in job abandonment. The claimant also signed a leave of absence form which explicitly stated that if he did not return or provide requested information to support his continued absences, separation would occur (Claimant Exhibit 1).
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. The credible evidence presented is the claimant was still employed on September 5, 2017, and expected to return to work or complete the requested FMLA paperwork. The claimant did not report or complete the paperwork, assuming he had been fired. Since the claimant did not follow up with management personnel or union, failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy and his assumption of having been fired was erroneous, his failure to continue reporting to work was an abandonment of the job. Based on the evidence presented, the administrative law judge concludes the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are denied.

DECISION:

The September 27, 2017, (reference 02) decision is affirmed. The claimant is able to and available for work. The claimant voluntarily quit the employment without good cause attributed 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.

_____
Jennifer L. Beckman
Administrative Law Judge

_____
Decision Dated and Mailed

jlb/scn