

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN C LAMER
Claimant

DAVID SPEED
Employer

APPEAL 16A-UI-07355-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/12/16
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 June 29, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 22, 2016. Claimant participated. Employer participated through regional operations manager Brian Krenke and human resources coordinator Shannon LaBonne.

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 pest control technician from January 19, 2015, and was separated from employment on May 27, 2016, when he quit.

On May 20, 2016, the employer gave claimant a final written warning for not completing route work, failure to contact his supervisor, and failure to complete his mandatory phone meeting. Claimant was warned that his job was in jeopardy. Claimant signed for the warning. Claimant told the employer that he was under stress due to his route work. Claimant had his phone in his hand when he was given the warning.

On May 26, 2016, Scott Bingham (claimant's immediate supervisor) sent claimant a text message to call him. On May 27, 2016, Mr. Bingham made numerous attempts to contact claimant by phone because claimant had missed a mandatory phone meeting that day. On May 27, 2016, Mr. Bingham received a text message from claimant at 2:01 p.m. that stated, "I'm going to be resigning from Plunketts". Mr. Bingham then attempted to contact claimant, but

claimant did not respond. Mr. Bingham then contacted Mr. Krenke and they agreed to try to contact claimant. Over the weekend, Mr. Bingham continued to try to contact claimant, but was unsuccessful.

On May 30, 2016, Mr. Bingham and Mr. Krenke agreed that Mr. Krenke would go to claimant's residence on May 31, 2016 and get the employer's vehicle that was in claimant's possession and have claimant sign a resignation document. On May 31, 2016, Mr. Krenke drove towards claimant's residence. Just east of Red Oak, Mr. Krenke met claimant driving the employer's vehicle. Claimant was going towards Red Oak. Mr. Krenke turned around and caught up to claimant in Red Oak. Mr. Krenke got claimant to pull over. Mr. Krenke told claimant he needed to exit the vehicle. Claimant told Mr. Krenke he was going to Lincoln. Mr. Krenke told claimant he was not authorized to drive the vehicle because the employer deemed him to have quit. Claimant told Mr. Krenke he was trying to reach the employer but he had lost his phone. Claimant did not say when he lost his phone. Claimant was not in his work uniform and traveling to Lincoln was not a part of his normal job duties. Claimant did not say why he was going to Lincoln. Claimant did not tell Mr. Krenke he was having medical issues.

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. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

For the reasons below, this administrative law judge concludes that claimant voluntarily quit and was not discharged from employment.

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 Admin. Code r. 871-24.25(28) and (37) 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:

(28) The claimant left after being reprimanded.

(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).

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. On May 20, 2016, the employer gave claimant a final written warning. The employer warned claimant that his job was in jeopardy. Claimant testified that he did not remember if he had his phone or if it was lost on May 20, 2016. Mr. Krenke provided credible testimony that claimant had his phone in his hand when he was given this final written warning. Then on May 26, 2016, claimant's supervisor sent claimant a message to call him. On May 27, 2016, claimant missed a mandatory meeting with his supervisor. Mr. Bingham attempted to contact claimant multiple times but was unsuccessful. At 2:01 p.m., Mr. Bingham received a text message from claimant stating that he was resigning. Mr. Bingham again tried to contact him but with no success. Mr. Bingham then tried contacting claimant over the weekend, but with no success. Claimant never contacted the employer.

The employer has presented substantial and credible evidence that claimant sent a text message to his supervisor that he was resigning and then refused to respond to the employer's follow up inquiries. Claimant's text message and subsequent refusal to communicate with the employer made the employer's determination that claimant intended quit on May 27, 2016 reasonable. Claimant's leaving the employment without reason and the failure to communicate with the employer after his text message renders the separation job abandonment without good cause attributable to the employer. 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 according to Iowa law. Benefits must be denied.

DECISION:

The June 29, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs