

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM P UREY
Claimant

HACH CO INC
Employer

APPEAL 16A-UI-10338-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/21/16
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 September 7, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 6, 2016. Employer participated through divisional service manager Shawn Buettner. Claimant initially participated in the hearing. Claimant provided testimony and answered questions on cross examination; however, during Mr. Buettner's testimony, claimant disconnected from the hearing. The administrative law judge called claimant back at the number provided, but he did not answer. The administrative law judge left a message on how claimant could be reconnected to the hearing, but claimant did not contact the Appeals Bureau before the record was closed.

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 senior field service technician from June 2015, and was separated from employment on August 17, 2016.

The employer has a written policy that if an employee is a no-call/no-show for three consecutive work days, it is considered a voluntary quit. Claimant was aware of the policy. The employer has a written call in procedure that requires employees to call their supervisor prior to the start of their shift, but it is somewhat flexible. Claimant was aware of the call in procedure.

Claimant's father passed away on June 2016 and he used three days of bereavement at that time. Claimant requested three weeks off in June to go to Africa, but the employer denied the request because he did not have that amount of accrued vacation time and because of staffing issues. Mr. Buettner told claimant to shorten his request to two weeks. Claimant requested

July 5 – 18, 2016, which the employer approved. On July 4, 2016, Mr. Buettner was notified claimant's trip was canceled. On July 6, 2016, claimant requested time off from July 25 – August 9, 2015, which was again approved by the employer.

Claimant started his vacation on July 25, 2016 and was scheduled to return to work on August 10, 2016. Claimant did not give Mr. Buettner a time that he would return, so Mr. Buettner assumed it would be in the morning; time off in the morning is considered vacation time. Claimant exhausted his vacation time on August 8, 2016. The employer logged August 9, 2016 as unpaid time off for claimant.

Claimant did not return to the United States on August 9, 2016 or August 10, 2016. Claimant was a no-call/no-show on August 10, 11, and 12, 2016, which were three consecutive work days for claimant. Claimant did not call Mr. Buettner to report these absences. Mr. Buettner tried calling claimant on August 10, 2016, but was unsuccessful. Mr. Buettner sent claimant multiple text messages and e-mails on August 10, 11, and 12, 2016. Mr. Buettner did not receive a response from claimant on August 10, 11, or 12, 2016.

On August 15, 2016, at 3:25 a.m., Mr. Buettner received a voicemail from claimant stating his flight was canceled due to weather and that he was going to fly home the next day. Mr. Buettner attempted to reach claimant on August 15, 2016, but was unsuccessful and claimant had not provided Mr. Buettner with a new number. Mr. Buettner was not sure what day claimant was referring to because of the time difference. Mr. Buettner attempted to call claimant on August 16, 2016, but he was not successful.

On August 17, 2016, claimant contacted the employer from his work phone. The employer determined claimant was using his work phone because of caller ID. Claimant told the employer he was back in the United States. Claimant told the employer that he did not contact Mr. Buettner on August 9, 10, 11, or 12, 2016 because he did not have Mr. Buettner's phone number. Claimant testified at the hearing that he had called his wife to get Mr. Buettner's phone number from claimant's phone. The employer requested claimant's travel itinerary because of inconsistencies with his story. The employer wanted proof that claimant was scheduled to fly back to the United States on August 9, 2016 and arrive on August 10, 2016. Claimant never provided his itinerary to the employer. Claimant sent Mr. Buettner a text message that he could not find his itinerary.

During claimant's absence, he did not have his wife contact the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged from employment, but his separation was a voluntary quit when he was a no-call/no-show for three consecutive days. Claimant's separation 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. It is noted that claimant testified that he had to call his wife to get Mr. Buettner's phone number from his phone because he did not have Mr. Buettner's number; however, Mr. Buettner provided credible testimony that claimant called the employer from his work phone on August 17, 2016, the day claimant arrived back in the United States. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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 employer has a written policy that if an employee is a no-call/no-show for three consecutive work days, then they are considered to have voluntarily quit. Mr. Buettner credibly testified that claimant was a no-call/no-show on August 10, 11, and 12, 2016. Mr. Buettner attempted to call, text, and e-mail claimant, but was not successful. Furthermore, on August 17, 2016, the employer gave claimant the opportunity to provide information that he had scheduled a return flight from Africa on August 9, 2016 with a return date of August 10, 2016, but claimant failed to provide any documentation that he had scheduled a flight for those days. It is also noted that claimant had initially requested three weeks of vacation, but was only approved for two weeks.

Inasmuch as claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are denied.

DECISION:

The September 7, 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 claimant 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/rvs