IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

HUSSEIN S YOUSIF Claimant **MOSAIC** Employer	**APPEAL 15A-UI-10947-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/06/15** **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 28, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 14, 2015. Claimant participated. Youssouf Zougmore participated on behalf of claimant. Employer participated through human resource manager, Teresa Tekolste, and representative, David Williams. Michele Fron, Kyle Wennerstrom, and Joseph Khan were present on behalf of the employer but did not testify. Employer Exhibits One and Two were admitted into evidence with no objection. Employer Exhibit Three was admitted into evidence over claimant's objection. Claimant's objection was that he did not get the phone call. Employer Exhibits Four through Nine were admitted into evidence with no objection

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge 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 direct support associate from September 2, 2014, and was separated from employment on September 25, 2015, when he quit.

The employer provides services to adults in a group home. The residents rely on the employer and its employees for their daily needs. Claimant, as a direct support associate, was responsible for assisting the residents.

Prior to August 13, 2015, claimant exhibited behavior through verbal conversations and text messages that caused the employer to be concerned for the safety of its residents, employees, and claimant himself. Employer Exhibits Two, Three, Four, Five, Six, Seven, Eight, and Nine. On August 13, 2015, the employer put claimant on suspension/off duty because of concerns for the safety of its residents, co-workers, and claimant. Employer Exhibits Two, Three, Four, Five,

Six, Seven, Eight, and Nine. Claimant was paid through accrued paid time off (PTO) during this time. The employer sent a letter to claimant that detailed some of the events that led up to claimant being on suspension/off duty. Employer Exhibit Two. The employer also included a return to work form, which required a doctor to provide documentation that he could return to work. Employer Exhibit Two. An employee request form was also included, which allows employees to request time off, Family and Medical Leave Act (FMLA) leave, or a leave of absence. Employer Exhibit Two. On September 15, 2015, Ms. Tekolste sent another letter to claimant stating the employer had not heard back from claimant. Employer Exhibit One. Ms. Tekolste provided another return to work form and requested communication by September 25, 2015. Employer Exhibit One. There were three people named in the letter for claimant to contact, including Ms. Tekolste. Employer Exhibits One and Two. Claimant did not contact any of the three. Claimant testified that after being placed off duty on August 13, 2015, he had no intention of going back work.

Claimant was ultimately separated from employment when he failed to respond to the employer's letters. Claimant never returned any paperwork for leave. Claimant never returned the request to return to work form.

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 reviewed the exhibits submitted. 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(6) and (20) 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 § 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 § 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:
>
> (6) The claimant left as a result of an inability to work with other employees.
>
> (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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. Claimant's leaving the employment and failure to return to work or communicate with the employer renders the separation job abandonment without good cause attributable to the employer.

Prior to August 13, 2015, claimant exhibited behavior through verbal conversations and text messages that caused the employer to be concerned for the safety of its residents, employees, and claimant himself. Employer Exhibits Two, Three, Four, Five, Six, Seven, Eight, and Nine. Some examples included: claimant told a co-worker things that were not real and causing a co-worker to be concerned (Employer Exhibit Four), claimant texted Mr. Wennerstrom on August 25, 2015, asking if Mr. Wennerstrom put anything in his coffee (Employer Exhibit Nine), claimant texted Mr. Wennerstrom on August 12, 2015, asking "[i]s DHS on my ass?" (Employer Exhibit Nine), claimant further texted Mr. Wennerstrom on August 12, 2015, stating "I'm actually Possessed" (Employer Exhibit Nine), claimant also texted Mr. Wennerstrom on August 12, 2015, stating "When I'm at work I'm getting harassed. Idk on Carol Mau part. DHS is involved." (Employer Exhibit Nine), and finally, claimant texted Mr. Wennerstrom on August 12, 2015, stating "I believe the Govt was on my ass and on Facebook for a while. It freaked me out everyday." (Employer Exhibit Nine).

Claimant was responsible for the daily needs of the employer's residents. Workers in the medical or dependent care profession, reasonably have a higher standard of care required in the performance of their job duties. That duty is evident by the residents' reliance on the workers for their daily needs. On August 13, 2015, the employer placed claimant on off duty status because of its concerns for the safety of its residents, co-workers, and claimant. Employer Exhibits Two, Three, Four, Five, Six, Seven, Eight, and Nine. The employer sent claimant a letter that detailed some of the events that led up to him being placed off duty. Employer Exhibit Two. The employer also included a return to work form, which required a doctor to provide documentation that he could return to work. Employer Exhibit Two. An employee request form that was also included, which allows employees to request time off, Family and Medical Leave Act (FMLA) leave, or a leave of absence. Employer Exhibit Two. Claimant was encouraged to fill out the leave of absence request form and return it to the employer. Employer Exhibit Two. Claimant did not respond to the letter.

On September 15, 2015, Ms. Tekolste sent another letter to claimant. Employer Exhibit One. The employer had not heard from the claimant after the August 13, 2015 letter regarding his status. Employer Exhibit One. Ms. Tekolste provided another return to work form and requested communication by September 25, 2015. Employer Exhibit One. In both letters, claimant was given three people to contact, including Ms. Tekolste. Employer Exhibits One and Two. Claimant did not contact any of the three people listed. Claimant did not respond to the employer by September 25, 2015. Claimant testified that after being placed off duty on August 13, 2015, he had no intention of going back work.

Claimant was not discharged, but voluntarily quit when he failed to communicate with the employer. Claimant was placed on off duty status and given the opportunity to request a leave of absence or return to work (with doctor's release). Employer Exhibits One and Two. Claimant failed to respond to the employer, and after over 40 days of no response, he abandoned his job. Claimant's leaving the employment and failure to return to work or communicate with the employer 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 September 28, 2015, (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.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs