

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KRISTIN D CORLEY**  
Claimant

**IA DEPT OF HUMAN SVCS/GLENWOOD**  
Employer

**APPEAL 18A-UI-12454-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/02/18  
Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 21, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 16, 2019. Claimant participated and testified. Claimant's fiancé, Darby Manville, also testified on her behalf. Employer participated through Hearing Representative Judy Berry and witnesses Natalie McEwen and Karen Baggett. Employer's Exhibits 1 through 4 were received into evidence. Official notice was taken of the fact-finding documents.

**ISSUES:**

Did the claimant quit the employment without good cause attributable to the employer?  
Has the claimant been overpaid benefits?  
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 4, 2017. Claimant last worked as a full-time residential treatment worker. Claimant was separated from employment on December 4, 2018.

During the month of November Claimant missed work one week because she had a death in her family that required her to travel out of state to attend the funeral. Claimant testified, prior to leaving she notified two of her immediate supervisors, Jenna and Amanda, that she needed to take time off work and told them why. According to claimant she had conversations with both about what type of leave she would be able to use to cover her absences. Claimant further testified she filled out a bereavement leave form to give the Jenna, but Jenna neglected to take this form when the two spoke. Claimant was under the impression that, even though she was on bereavement leave, she had to call and report her absences each day she was gone, which

she did. Claimant testified, and Manville confirmed, that each time she called in, she reported she would be absent because she was still out of state attending a funeral.

McEwen testified that the employer's records indicated claimant called in each day she was gone to report she was sick. McEwen acknowledged that bereavement leave is taken out of accrued sick leave, but was adamant that claimant had called to report she was sick, rather than at a funeral out of state, based on her conversations with Jenna and Amanda. McEwen did not speak with claimant directly in the time leading up to or during her absence. McEwen had no knowledge of any conversations Jenna or Amanda had with claimant leading up to her absence.

Because the employer's records indicated claimant was out due to illness, claimant was advised she had to meet with McEwen before she could return to work. During the meeting McEwen told claimant she would need a doctor's excuse to return. Claimant explained she was confused by that requirement, as she was not sick, but at a funeral. McEwen reiterated that because claimant had reported she was out due to illness she would need an excuse. Claimant told McEwen that she did not report she was out due to illness, but that she was on bereavement leave. Manville asked McEwen several times how claimant was supposed to get a doctor's excuse for a funeral. McEwen insisted that was what would be required for claimant to return to work. During the hearing McEwen explained, that while she used the term doctor's excuse, what she was asking claimant to get was a doctor's release showing she was healthy and could work. McEwen did not understand why claimant would be confused or believe she was asking for a doctor to excuse her for time missed.

Following this conversation claimant did not show up to work or call in for her next five scheduled shifts. Claimant testified this was because she did not have a doctor's note excusing her from work and knew she would not be able to get one. On December 4, 2018, the employer sent claimant a letter separating her from employment under its three day no call/no show policy. (Exhibit 4). The policy states employees who miss three consecutive shifts without calling in are considered to have voluntarily quit. (Exhibit 2).

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 2, 2018. The claimant filed for and received a total of \$1,836.00 in unemployment insurance benefits for the weeks between December 16, 2018 and January 12, 2019. Both the employer and the claimant participated in a fact finding interview regarding the separation on December 20, 2018. The fact finder determined claimant qualified for benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was separated from employment with good cause attributable to the employer.

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 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.

...

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

...

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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 claimant's version of events to be more credible than the employer's recollection of those events. Claimant provided direct, first-hand testimony, which was corroborated by her witness. The employer, on the other hand, relied on second-hand information and was unable to confirm or deny portions of conversations about which claimant provided testimony.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence

that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

The employer contends claimant voluntarily quit when she was a no call/no show for three consecutive days in violation of its policy. However, prior to missing those three days, claimant had been told by the employer that she was required to get a doctor's excuse before she could return to work, despite the fact that the employer knew, at that point in time, that claimant was not ill, but had been on bereavement leave. Such request was not reasonable given that claimant was never ill. Furthermore, it was reasonable for the claimant to assume, based on the terminology used by the employer, that she was required to get an excuse to return, rather than a release. Claimant knew she would not be able to get such a document and expressed this to the employer, but was not allowed to return to work. Since claimant had urgent business to attend to for fewer than ten days and returned to offer services within ten days, but was not allowed to do so by the employer, the separation was with good cause attributable to the employer. Benefits are allowed. As benefits are allowed, the issues of overpayment and participation are moot.

**DECISION:**

The December 21, 2018, (reference 01) decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs