

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAUL M MARTINEZ
Claimant

SABRE COMMUNICATIONS CORP
Employer

APPEAL 15A-UI-10784-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/15
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 21, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 9, 2015. Claimant participated. CTS Language Link interpreter number 6840 interpreted on behalf of claimant. Employer participated through human resources specialist Kelli Beach. Employer Exhibits One and Two 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 welder from April 22, 2013, and was separated from employment on July 13, 2015, when he quit.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies. Employer Exhibit Two. The policy also provides that an employee will be warned as points are accumulated. Employer Exhibit Two. The policy further provides that if an employee is a no-call/no-show two times in a rolling 12-month period is considered to have voluntarily quit employment. Employer Exhibit Two. Claimant was made aware of the employer's policy.

Claimant was a no-call/no-show to work from July 6, 2015 through July 10, 2015. Claimant was scheduled to work these days. During this time period, claimant made no attempt to contact the employer. The employer did not attempt to contact claimant. The employer sent a separation letter to claimant on July 13, 2015. Claimant had no prior warnings for no-call/no-shows.

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(1) 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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

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).

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 was scheduled to work Monday, July 6, 2015, through Friday, July 10, 2015. Claimant was absent on all of these days. Claimant did not contact the employer on any of these days to let the employer know he was going to be absent. Claimant was aware of the employer's call-in procedure and had utilized the procedure in the past. Claimant was separated from employment for missing five consecutive workdays. Inasmuch as claimant failed to report for work or notify the employer for five consecutive workdays, claimant's leaving the employment without notice or reason, and the failure to return to work 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.

Furthermore, 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. Sometime prior to July 13, 2015, claimant testified he had an argument with a lead at work. Claimant testified that the lead called him a S.O.B. Claimant testified he told the lead this was not right. Claimant testified he then left work at this point. Claimant did not report this incident to his supervisors. Claimant also testified that the lead told him he was discharged. Claimant's argument is not persuasive. Claimant never reported the incident to his supervisors. The lead also did not have the authority to hire and fire employees. Since claimant did not follow up with management personnel or the owner, and his assumption of having been fired was erroneous, his failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The September 21, 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs