

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

QUANG M HUYNH

Claimant

APPEAL NO: 18A-UI-06157-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 04/22/18

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 25, 2018, (reference 01) unemployment insurance decision that denied benefits based upon separation. The claimant was properly notified about the hearing. A telephone hearing was held on June 20, 2018, jointly with Appeal 18A-UI-06158-JC-T. The claimant participated personally. The employer participated through David Williams, hearing representative with Equifax. Elma Palladino, supervisor, testified for the employer. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer or was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a collections representative and was separated from employment on February 5, 2018. The evidence is disputed whether the claimant quit or was discharged.

When the claimant was hired, he was provided training on the employer's policies including attendance, notification of absences, no call/no shows and requesting a leave of absence when needed. Specifically, the employer also has a policy which indicates three consecutive no-call/no shows are grounds for separation.

The claimant last performed work on January 4, 2018, and began reporting his absences via text message to his new supervisor, Elma Palladino. The claimant discontinued reporting his absences after telling Ms. Palladino on January 8, 2018, that he would need "a few more days". Throughout his text messages to Ms. Palladino, she responded by asking him to call her. The claimant refused to call, citing to dealing with personal issues.

On January 16, 2018, the claimant's paycheck was deposited and when he saw it, it was lower than the amount of money he anticipated. He was upset by the reduced paycheck. However, at the time, he contacted Ms. Palladino about the paycheck. Ms. Palladino called and left a voicemail for the claimant explaining he had not completed his time card for the pay period. She encouraged him to call human resources. The claimant responded via text message to Ms. Palladino saying he was bitter and contemplating not returning to Wells Fargo. He then told her he was very upset and did not want to speak to her. She responded by letting him know human resources was aware of the situation and he could call either her or them.

The claimant indicated he tried to contact human resources twice to obtain log on information to address his paycheck and obtain an electronic copy but was unsuccessful and that he gave up trying. He then went to California for several weeks to be with his mother, who later passed away. During this time, Ms. Palladino left a voicemail for the claimant on January 19, 2018 and for the next five business days. The claimant did not respond. He did not request a leave of absence or contact human resources regarding his absences. Because he discontinued reporting and went to California for an extended period, he also did not receive a letter dated February 5, 2018 directing the claimant to contact the employer for a leave of absence or else the employer would accept separation due to job abandonment.

At the hearing the claimant denied quitting and questioned if the reduced paycheck was a sign that he had been fired. The claimant also acknowledged he did not respond to Ms. Palladino's requests for him to call her or return her calls or contact human resources. The claimant indicated he was dealing with personal issues and then with his mother, as the reasons he did not return to work, request a leave of absence or respond to the employers' requests to make contact.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged, but quit the employment, without good cause attributable to the employer. Benefits are denied.

An unemployed person who meets the basic eligibility criteria receives benefits unless they are disqualified for some reason. Iowa Code § 96.4. Generally, disqualification from benefits is based on three provisions of the unemployment insurance law that disqualify claimants until they have been reemployed and they have been reemployed and have been paid wages for insured work equal to ten times their weekly benefit amount. An individual is subject to such a disqualification if the individual (1) "has left work voluntarily without good cause attributable to the individual's employer" Iowa Code § 96.5(1) or (2) is discharged for work –connected misconduct, Iowa Code § 96.5(2) a, or (3) fails to accept suitable work without good cause, Iowa Code § 96.5(3).

The first two disqualifications are premised on the occurrence of a separation of employment. To be disqualified based on the nature of the separation, the claimant must either have been fired for misconduct or have quit but not for good cause attributable to the employer. Generally, the employer bears the burden of proving disqualification of the claimant. Iowa Code § 96.6(2). Where a claimant has quit, however, the claimant has "the burden of proving that a voluntary quit was for good cause attributable to the employer pursuant to Iowa Code section § 96.5(1). Since the employer has the burden of proving disqualification, and the claimant only has the burden of proving the justification for a quit, the employer also has the burden of providing that a particular separation was a quit. The Iowa Supreme Court has thus been explicitly, "the employer has the burden of proving that a claimant's department from employment was voluntary." *Irving v. Employment Appeal Board*, 883, NW 2d 179, 210 (Iowa 2016).

The credible evidence presented does not support that the claimant was discharged from employment, but rather quit the employment by not returning and not maintaining contact. The claimant in this case was not on an approved leave of absence and was not properly reporting his absences after January 8, 2018. When he received a lower-than-expected paycheck on January 16, 2018, the claimant became upset. He first asked if he had been fired and then stated three days later he was bitter and was contemplating not returning to work. If the claimant had in fact believed he was discharged, he would not have had the option of contemplating a return to work. The evidence presented does not support the employer initiated separation inasmuch as it continued to contact the claimant by phone and mail when he discontinued reporting for work for several weeks while he went to California. The claimant was not told he was fired and it was only after he was unresponsive to multiple attempts to reach him that the employer sent the letter informing the claimant separation would occur if he did not timely respond. For these reasons, the administrative law judge concludes the claimant, not the employer, initiated separation when he abandoned his job. Accordingly, the separation is a voluntary quit.

Quit not shown: Iowa Code section § 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(20), Iowa Admin. Code r. 871-24.25(23), and Iowa Admin. Code r. 871-24.25(27) provide:

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:

(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.

(27) The claimant left rather than perform the assigned work as instructed.

The claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

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 claimant who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes claimant has not met his burden of proof to establish he quit for good cause reasons within Iowa law.

The undisputed evidence is the claimant discontinued working after January 4, 2018 and did not request a leave of absence to take time to address personal or family matters. He discontinued reporting his absences and refused to comply with the employer's request to call Ms. Palladino or human resources. The employer continued to make attempts to contact the claimant and help him preserve his job, by encouraging him to seek a leave of absence if he was unable to work.

The administrative law judge is sympathetic to the claimant, who was dealing with personal issues at the time, but cannot ignore that he abandoned his job by not taking reasonable steps to secure a leave of absence or alternately maintaining contact with the employer about his plans to return. Whether the claimant's frustration with a reduced paycheck impacted his decision to discontinue reporting and going to California is moot, inasmuch as the employer gave the claimant an opportunity to discuss and resolve issues, and he did not respond. While the 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 May 25, 2018, (reference 01) decision is affirmed. The claimant was not discharged, but quit 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn