IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

PENNY L TAYLOR Claimant **MEDIREVV INC** Employer	**APPEAL 17A-UI-12407-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/12/17** **Claimant: Appellant (5)**

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 December 1, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 21, 2017. Claimant participated. Employer participated through human resources manager Dawn Wisman and operations supervisor Cory Connor. Human resources manager Matthew Russell attended the hearing on the employer's behalf. Employer Exhibits 1 and 2 were admitted into evidence with no objection.

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 patient experience representative from February 27, 2017, and was separated from employment on November 14, 2017. Claimant's direct supervisor was Mr. Conner. Claimant was scheduled to work Monday through Friday from 7:30 a.m. to 4:00 p.m.

The employer has a written policy that provides if an employee has three consecutive no-call/no-shows, it is considered a voluntarily quit. Employer Exhibit 2. Claimant was aware of the policy. Employer Exhibit 1. The employer also has an attendance policy that provides if an employee accumulates three occurrences within one quarter then the next occurrence will start the progressive disciplinary procedures. Employer Exhibit 2. A doctor's note does not excuse an occurrence. The employer requires employees contact the employer and report their absence prior to the start of their shift. Claimant was to report her absences to her direct supervisor Mr. Conner. Claimant was aware of the employer's policy. Employer Exhibit 1.

The last day claimant worked for the employer was on November 8, 2017. Claimant only worked part of the day on November 8, 2017 and she left early because she was sick. Claimant

informed Mr. Conner she was leaving early. Prior to leaving, claimant received a message from Ms. Grassi that Ms. Grassi wanted to meet with her. Claimant informed Ms. Grassi that she was too sick to stay and she had to leave. Claimant did not meet with Ms. Grassi on November 8, 2017. Claimant thought Ms. Grassi was going to discharge her for leaving early because she had already received a final warning. When claimant left work on November 8, 2017, she took all of her pictures with her.

On November 9, 2017, claimant was scheduled to work, but she sent Mr. Conner a text message that she was going to the doctor again. This was the last text message claimant sent to Mr. Conner. Mr. Conner understood from claimant's text message that she was going to be absent and he responded ok. Claimant did not respond to Mr. Conner's reply.

Claimant was next scheduled to work on November 10, 13, and 14, 2017. Claimant failed to report to work on November 10, 13, and 14, 2017. Claimant did not contact the employer to report her absences for November 10, 13, and 14, 2017. The employer did not attempt to contact claimant. Claimant was a no-call/no-show on November 10, 13, and 14, 2017.

On November 14, 2017, the employer sent claimant a letter advising her that she was separated from employment because of her three consecutive days of no-call/no-shows. Employer Exhibit 1. In the letter, the employer instructed claimant she could contact the employer by November 21, 2017 if there were extenuating circumstances for her absences. On November 14, 2017, claimant sent an e-mail Mr. Conner at 1:51 p.m. Claimant informed Mr. Conner that she had broken her phone and requested Ms. Grassi's number. Mr. Conner provided claimant Ms. Wisman and Ms. Grassi's phone numbers.

Around November 16, 2017, claimant received the employer's letter dated November 14, 2017. Claimant did not contact the employer after she received the letter.

Claimant was last warned on October 10, 2017, that she faced termination from employment upon another incident of unexcused absenteeism. Employer Exhibit 1. Claimant was also issued written warnings for her attendance infractions on October 2, 2017, and September 13, 2017. Employer Exhibit 1. Most of claimant's attendance infractions were due to her or a family member's illness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to 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 that were admitted into evidence. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code section 96.5(2)*a* provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 2. *Discharge for misconduct.* If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> *a.* The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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:
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> **(4)** The claimant was absent for three days without giving notice to employer in violation of company rule.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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). 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. *LaGrange v. Iowa Dep't of Job Serv.,* (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

Claimant's argument that she did attempted to contact Ms. Grassi on November 10 and 14, 2017 because that is what Mr. Conner instructed her to do is not persuasive. Mr. Conner credibly testified that the only time he told claimant she should contact Ms. Grassi was before she left early on November 8, 2017. Claimant admitted that she did briefly communicate with Ms. Grassi on November 8, 2017. Mr. Conner also credibly testified he did not send claimant a text message that she was to contact Ms. Grassi after November 8, 2017. The last time claimant communicated with Mr. Conner was on November 9, 2017 when she told him she was going to the doctor. Mr. Conner credibly testified that claimant did not send him another text message after November 9, 2017. Claimant testified that she was normally supposed to contact Mr. Conner to report her absences, but she did not report her absences to Mr. Conner on November 10, 13, and 14, 2017. It is also noted that when claimant left on November 8, 2017, she took all of her pictures with her. Although claimant did send Mr. Conner an e-mail on November 14, 2017, she only requested Ms. Grassi's number and she did not report she was going to be absent. Furthermore, claimant sent the e-mail at 1:51 p.m., over six hours after her shift had started.

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. Inasmuch as claimant failed to report for work or notify the employer for three consecutive workdays (November 10, 13, and 14, 2017) 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 December 1, 2017, (reference 01) unemployment insurance decision is modified with no change in effect. The unemployment decision is modified with no change in effect because claimant was not discharged due to misconduct, claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs