

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SETH T DEWEY**

Claimant

**VALLEY PLUMBING INC**

Employer

**APPEAL 17A-UI-08162-DG**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/02/17**

**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 1, 2017, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on August 29, 2017 in Des Moines, Iowa. Claimant participated and was represented by David Albrecht, Attorney at Law. Employer participated by Corey DeBrouse, General Manager and was represented by Bradley M. Beaman, Attorney at Law. Employer's Exhibits 1-6 and Claimant's Exhibits A-B were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant quit for good cause attributable to employer?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 19, 2017. Claimant was separated from the employment on May 25, 2017.

Claimant began working for employer on March 22, 2017. At the time of separation he was employed as a plumber apprentice. On May 19, 2017 claimant was assigned to work in a hole that had been dug to work on a water line. It was raining and the claimant did not feel safe working in the trench. He believed that the walls of the trench may not have been stable, and he questioned whether the employer was placing him in a dangerous work environment.

Claimant called his supervisor and explained his concerns. The supervisor indicated that the project needed to move forward and that employees were being instructed to work in the rain. Claimant didn't think employer was doing the right thing. He decided he should call OSHA to inform them of his situation, and to consult them about the safety of the work-site. Claimant posted a question on Facebook about how to contact OSHA that was open to the general public.

The general manager for the company, Corey DeBrouse called claimant into his office later in the morning on May 19, 2017. Mr. DeBrouse asked claimant why he was trying to contact

OSHA about safety concerns when he should have contacted the employer. He also reprimanded him for posting questionable information on Facebook that could be traced back to the employer. The discussion between claimant and Mr. DeBrouse became heated and claimant became upset and was shouting back at Mr. DeBrouse. At that point Mr. DeBrouse told claimant he should go home for the day.

Claimant was not told he was fired, and he was not told to turn in his equipment and keys. It was payday and he was handed that week's paycheck. Claimant was not given his final paycheck on that date. Employer had work available to claimant, and it expected him to return to work on May 22, 2017.

Claimant did not return to work on May 22, 2017 and he did not call into work or show up for work after that date. Employer does have a three day no-call/no-show policy which indicates that any employee who fails to call into work or show up to work for three consecutive days of work is considered to have quit the employment.

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

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he mistakenly believed he had been fired by employer.

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(21) 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:

- (21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(27) 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:

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

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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.*

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). 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.

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 the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are denied.

**DECISION:**

The decision of the representative dated August 1, 2017, (reference 01) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/scn