

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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<b>SHAWN L ROLAND</b>	:	
	:	<b>HEARING NUMBER: 21B-UI-07182</b>
Claimant	:	
	:	
and	:	<b>EMPLOYMENT APPEAL BOARD</b>
	:	<b>DECISION</b>
<b>K M JANITORIAL SERVICES INC</b>	:	
	:	
Employer	:	

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-2-A, 96.6-2

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Shawn Roland (Claimant) was employed full time as a janitor from March 16, 2016, until September 21, 2020, when he quit by job abandonment.

The Employer had given Claimant two written warnings for driving home when he should have been on the jobsite. These warning were in July and in early September. Claimant's supervisor Andre McKay learned that the Claimant had been going home when he was supposed to be working.

McKay was contacted on September 18 by a client who informed McKay that the Claimant had not been in the building cleaning during times when he said that he was. The client based this on the client's review of camera footage.

On September 21, 2020 McKay called the Claimant to inquire why he had not performed all of his cleaning duties over the weekend. Claimant claimed that he had performed all of his assigned duties. Mr. McKay told the Claimant that he was assigned to Ankeny. The Employer intended this to prevent the Claimant from going home when he was supposed to be working. The Claimant ceased coming to work altogether. McKay tried calling the Claimant but the Claimant was nonresponsive. The Employer did not tell the Claimant he was terminated, but had only changed the Claimant's location to Ankeny.

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

*Timeliness of Appeal to Administrative Law Judge:* We agree with the Administrative Law Judge that the Claimant's appeal was timely and so we affirm that portion of the decision.

*Quit:* Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: Voluntary Quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Generally a quit is defined to be "a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 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.

Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. The Iowa Supreme Court has thus been explicit: "the employer has the burden of proving that a claimant's departure from employment was voluntary." *Irving v. EAB*, slip op at 57, No. 15-0104 (Iowa 6/3/2016)(amended 8/23/16); On the issue of whether a quit is for good cause attributable to the employer the Claimant had the burden of proof by statute. Iowa Code §96.6(2). "[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), accord *Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992).

It is the duty of the Board as the ultimate 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 Board, 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, as well as the weight to give other evidence, a Board member 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 evidence to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence the Board believes; 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). The Board also gives weight to the opinion of the Administrative Law Judge concerning credibility and weight of evidence, particularly where the hearing is in-person, although the Board is not bound by that opinion. Iowa Code §17A.10(3); *Iowa State Fairgrounds Security v. Iowa Civil Rights Commission*, 322 N.W.2d 293, 294 (Iowa 1982). The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence considering the applicable factors listed above, and the Board's collective common sense and experience. We have found credible the Employer's evidence that the Claimant was expected to start his assignment in Ankeny the next week, and that the Claimant just stopped coming to work. We do **not** find credible the Claimant's evidence that he was fired by the Employer in a phone call about him not performing his duties.

Given the facts, and the evidence we find credible, we conclude that the Claimant quit through job abandonment. *See Bunger v. EAB*, No. 17-0560 (Iowa App. 11-22-2017). The failure to come to work when he knew the Employer was expecting him, and to never show again, is an overt act of quitting. Also we conclude based on the record that this showed the Claimant's intent to quit. Since good cause attributable to the Employer for the quit is not shown, we deny benefits.

**DECISION:**

The administrative law judge's decision dated May 28, 2021 is **REVERSED**. The Employment Appeal Board concludes that the claimant quit but not for good cause attributable to the employer. Accordingly, he is denied benefits until such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)(g).

The Board remands this matter to the Iowa Workforce Development Center, Benefits Bureau, for a calculation of the overpayment amount based on this decision.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn