

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEVEN J SHARP**  
Claimant

**DOLLAR TREE STORES INC**  
Employer

**APPEAL 17A-UI-03285-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/08/17**  
**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 March 20, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 18, 2017. Claimant participated. Employer participated through store manager Hollie Price. Official notice was taken of the administrative record, including claimant's wage history, 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 part-time as a stocker from March 21, 2016, and was separated from employment on December 10, 2016, when he quit.

The employer requires its employees to notify the employer at least two hours prior to the start of their shift if they are going to be absent. The employer also requires its employees to provide doctor's notes upon the request of a manager for their absence. The policy prohibits excessive absences. The employer also has a no-call/no-show policy that if an employee has two consecutive no-call/no-shows, they are considered to have voluntarily quit their employment. Claimant was aware of the policies when he received a copy of the handbook.

On December 5, 2016, claimant was scheduled to work. Claimant called the employer about 15 minutes after the start of his shift and spoke to Mr. Price. Claimant told Mr. Price that he had to adjust his medication due to his medical condition and was not going to be able to work. Mr. Price requested claimant provide a doctor's note for his absence. Claimant told Mr. Price he was not going to go to the doctor. Mr. Price told claimant that if he did not go to the doctor the employer would consider his absence to be unexcused and if he continued to have unexcused

absences Mr. Price would have to look at replacing him. Claimant reiterated that he was not going to the doctor. Because claimant had refused to provide a doctor's note, the employer was only going to count the absence as unexcused, but it was going to allow him to continue to work for the employer. Mr. Price did not tell claimant he was going to be discharged for being absent on December 5, 2016. Claimant did not contact the employer after December 5, 2016.

Claimant was next scheduled to work on December 6, 8, and 10, 2016. Claimant did not work on December 6, 8, or 10, 2016. Claimant did not call the employer to report his absences on these days. The employer did not attempt to contact claimant. The employer gave claimant until December 10, 2016 to report to work. The employer allowed claimant to have three consecutive no-call/no-shows before it considered him to have abandoned his job.

Claimant does not have other full- or part-time employment in the base period.

### **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 finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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 §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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). 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).

Mr. Price credibly testified that on December 5, 2016, he told claimant that if he did not provide a doctor's note his absence would be considered unexcused and if continued to have unexcused absences he would be replaced. Mr. Price did not tell claimant that he was going to be discharged. Claimant then failed to report to work or contact the employer on his next three work days. Since claimant did not follow up with management personnel and his assumption of having been fired was erroneous, the failure to continue reporting to work was an abandonment of the job. Benefits are denied.

**DECISION:**

The March 20, 2017, (reference 01) unemployment insurance decision is affirmed. 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 his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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