

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRYCE J MCMULLEN
Claimant

GESY, DANIEL
Employer

APPEAL 16A-UI-04815-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/28/16
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 April 21, 2016, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing set for May 10, 2016. On May 10, 2016, the employer's motion to continue the hearing was granted to allow the employer an opportunity to provide exhibits. A telephone hearing was then held on May 16, 2016. Claimant participated. Employer participated through owner, Daniel Gesy and payroll administrator, Gillian Topete. The parties waived timely notice for the May 16, 2016 hearing.

ISSUES:

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 welder/maintenance from September 10, 2013, and was separated from employment on March 30, 2016.

The employer has a written no-call/no-show policy. After three no-call/no-shows, an employee is deemed to have voluntary quit. The no-call/no-shows do not have to be consecutive business days. Employees are supposed to call their supervisor to report any absences. Claimant has called the employer before to report his absences or tardies.

On March 25, 2016, claimant came to the car wash in Sioux City. Daniel Gesy asked claimant to put some tools in Daniel Gesy's truck. Later, Daniel Gesy found some tools in claimant's trucks. Daniel Gesy questioned claimant about the tools. Claimant then put the tools in Daniel Gesy's truck. Daniel Gesy was upset with claimant and claimant seemed upset with Daniel Gesy. Daniel Gesy did not tell claimant he would contact claimant on March 27, 2016 about

where to report for work on Monday, March 28, 2016. Claimant was always to report to the Denison location, unless otherwise notified.

Claimant did not show up for work on March 28, 29, and 30, 2016. March 28, 29, and 30, 2016, were scheduled work days for claimant. Claimant did not call the employer to report his absences on March 28, 29, and 30, 2016. The employer did not try to contact claimant on March 28, 29, and 30, 2016.

Jason Gesy did not hear anything from claimant after March 25, 2016. Daniel Gesy did not hear anything from claimant after March 25, 2016. Jason Gesy and Daniel Gesy were claimant's supervisors. Approximately a week later, Daniel Gesy texted claimant that he wanted his tools and keys back or he would report claimant to law enforcement. Daniel Gesy did not hear anything back from claimant. The employer did not tell claimant he was fired. There was work available for claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the 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.

Based on the reasons below, this administrative law judge finds claimant was not discharged from employment, but was separated when he quit.

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.

Iowa Admin. Code r. 871-24.25(4) and (22) 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 § 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 § 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.

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

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

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. The employer has a no-call/no-show policy, but it does not require the three no-call/no-shows to be consecutive business days. Since the employer does not have a policy as set out in Iowa Admin. Code r. 871-24.25(4), the separation was not due to failure to call or report for three days.

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. Claimant was a no-call/no-show on March 28, 29, and 30, 2016. Claimant's argument that he tried to contact Jason Gesy on March 28, 2016, is not persuasive. Claimant was aware that Jason Gesy was in Omaha for his son's procedure. Furthermore, claimant did not even attempt to contact Daniel Gesy regarding where he was to work knowing Jason Gesy was unavailable. Daniel Gesy credibly testified that claimant was to report to the Denison office unless otherwise instructed and claimant was not instructed to report anywhere else on March 28, 29, and 30, 2016. 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.

Claimant's leaving the employment without notice or reason, and the failure to return to work renders the separation job abandonment without good cause attributable to the employer. While 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 April 21, 2016, (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily left 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css