

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRISHA R CHILDS

Claimant

APPEAL 16A-UI-08805-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 07/17/16

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 August 8, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 30, 2016. Claimant participated. Employer participated through store manager Rhonda Burford.

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 cashier from September 17, 2015, and was separated from employment on July 22, 2016.

On the morning of July 22, 2016, claimant accused Ms. Burford of telling Lacey that claimant refused to work the night shift. Claimant also stated that Lacey was going to quit. While on the sales floor, claimant stated "Great, my boss is going to be a [b**ch] all the time". Claimant left shortly thereafter. Ms. Burford questioned Lacey if she said she was tired of everything and wanted to quit. Lacey denied saying she wanted to quit.

Later on July 22, 2016, shortly after claimant came to work (around 11:00 p.m.), Steve, an employee, requested claimant to come back to the back room. Ms. Burford had asked Steve to get claimant because claimant and Steve appeared to have a good rapport. Ms. Burford has a small office, so they used the back room because it is a larger room. When Steve and claimant got to the back room, Jessica (an assistant manager) and Ms. Burford were already there. Ms. Burford handed claimant a write up for what happened during the morning on July 22, 2016. Steve asked claimant what Lacey had told her. Claimant stated Lacey said something to the effect that she was tired of everything and was going to quit. Claimant handed the write up back

to Ms. Burford before reading it and said she was not going to deal with it and walked out of the backroom. Claimant did not sign the write up because she did not agree with it. Employees can refuse to sign the corrective action without further disciplinary action and there is a place for employees to leave comments. After claimant walked out, Steve followed her and tried to get her to come back to resolve the situation, but she did not want to. Ms. Burford testified that according to the video, it did not appear that Steve was yelling at claimant and his hands were in his pockets. Claimant refused to return, clocked out, and left without finishing her scheduled shift. Claimant told Steve three times that she was not quitting her job. Claimant then came back to the employer approximately twenty minutes later, got a fountain drink, and told Cassandra that it was nice working with her and it was “[bulls**t]”.

Claimant's next scheduled shift was July 23, 2016, but she did not work this shift. Claimant did not call the employer and tell it she was not coming in on July 23, 2016. Claimant thought the employer would call her. Claimant had not asked Ms. Burford to contact her and did not call Ms. Burford until July 25, 2016.

On July 25, 2016, Ms. Burford spoke to claimant. Claimant impressed upon Ms. Burford how she did not want Steve to be there. Claimant told Ms. Burford that it was a hostile work environment and she did not want to quit her job. When claimant spoke to Ms. Burford, claimant did not ask to come back to work. Claimant also had a meeting with Stacey, the area manager. Stacey told claimant that she was able to be rehired and could re-apply at any store.

Ms. Burford was not aware of claimant's panic/anxiety disorder. There was work available for claimant had she not left. Claimant had no prior corrective actions.

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.

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(21), (22), (27) and (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:

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

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

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

(28) The claimant left after being reprimanded.

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).

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. On July 22, 2016, the employer attempted to give claimant a write up for an earlier incident between Ms. Burford and claimant. Claimant did not agree with the write up and refused to sign it. It is noted that employees are allowed to refuse to sign a write up with no further disciplinary consequences. Even though claimant was not subject to any further disciplinary consequences for refusing to sign the write up, she decided to leave the employer at this time without finishing her scheduled shift (claimant walked out shortly after the start of her shift). Claimant's argument that she felt the situation created a hostile work environment is not persuasive. The employer was trying to give claimant a disciplinary write up for an earlier incident. The write up had a section that allowed claimant to provide any comments if she disagreed; however, she chose to leave instead of providing any comments. Employees can also refuse to sign a write up with no further disciplinary consequences. Although claimant testified the employer was aware of her panic/anxiety disorder, Ms. Burford testified that she was not aware of this and claimant had not provided any medical documentation to the employer.

Claimant's argument that she did not quit work on July 23, 2016 because she did not know what was going on and she thought the employer would contact her is also not persuasive. Claimant never requested the employer contact her and although she told Steve she was not quitting

when she left on July 22, 2016, her actions of not showing up for her next scheduled shift on July 23, 2016 and not contacting the employer to report her absence contradicted her statements to Steve.

Claimant's decision to quit because she did not agree with the supervisor about the disciplinary write up was not for a good cause reason attributable to the employer. Furthermore, 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. Since claimant did not follow up with management personnel and her assumption of having been fired was erroneous, her failure to continue reporting to work was an abandonment of the job. 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 August 8, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs