

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT D HEROLD
Claimant

FLAGGER PROS USA LLC
Employer

APPEAL 17A-UI-00902-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/25/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 19, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 28, 2017. Claimant participated. Employer participated through Victoria Johnson, Human Resources Manager.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a flagger working traffic control beginning on May 23, 2016 through September 13, 2016 when he voluntarily quit.

The claimant called the employer and told them he was quitting because he had found another job. He told the fact-finder he was quitting because he was not making enough money to pay for his gas to and from the job locations. During the third quarter 2016 the claimant was paid gross wages of \$15,394.00.

He was paid pursuant to the agreement he was told about by the employer. No evidence indicates he was not paid for all hours worked. No evidence indicates that any type of a 'franchise' fee was being deducted from his wages.

The claimant never complained to the employer about coworkers using illegal drugs, or about his pay being short or off prior to quitting. Claimant had opportunity to reach out to anyone in human resources, but did not do so. He has not established any illegal drug use on the job site.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

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(13) 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

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.

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). The claimant called and told the employer he was quitting. There is no requirement that he submit anything in writing to the employer to quit.

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 Ct. 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*, 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. *State v. Holtz*, Id. The claimant was not a credible witness.

The claimant has made numerous allegations about why he quit the job, none of which he presented to the employer or to the fact-finder when initially claiming benefits. The claimant is not credible when he alleges that the employer was stealing his wages by deducting a franchise fee from his wages. His mere allegation that a deduction was being made or that he was being shorted pay is not enough to meet his burden of proof that he left with good cause attributable to the employer. The claimant's allegations that coworkers did drugs are similarly not supported by any evidence. The claimant never complained to the supervisor or to the human resources department about what was allegedly occurring. The more persuasive conclusion is that the claimant quit for his own reasons, but is offering other explanations at hearing in an attempt to secure unemployment insurance benefits. The claimant was being paid all wages owed to him with no unauthorized deductions being made from his wages.

While claimant's decision to quit may have been based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The January 19, 2017, (reference 01) decision is affirmed. The claimant voluntarily left his 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs