

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**COTY A FOX**  
Claimant

**SCHENKER INC**  
Employer

**APPEAL 15A-UI-12395-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/18/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Coty Fox (claimant) filed an appeal from the November 3, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit work due to a non-work-related injury which was not a good-cause reason attributable to Schenker, Inc. (employer). The parties were properly notified about the hearing. A telephone hearing was held on November 25, 2015. The claimant and his wife, Annissa Fox, participated on his behalf. The employer participated through Human Resources Coordinator Michelle Cahco. Employer's Exhibit 1 was received.

**ISSUES:**

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the 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: The claimant was employed full time as a supply driver beginning on February 3, 2014, and his last day of work was October 1, 2015. In August 2015, the employer sent out warning notices to the claimant and 76 other drivers that they were going to be permanently laid off in October 2015. The claimant's wife, Annissa Fox, who had been a stay-at-home mother, found employment in light of the claimant's future layoff. On September 1, 2015, the employer sent out another letter to the claimant and the 76 other drivers stating the date of the layoff was being suspended indefinitely and continued work was available.

The claimant suffered a "mental breakdown" in October 2015. He was put on medication which caused him to have an allergic reaction. He called in sick and then went on bereavement leave the beginning of October 2015. On October 15, 2015, the claimant brought in a doctor's note stating he had been to the urgent care clinic. The urgent care doctor told him that if he was having an allergic reaction he should leave work for the day, but did not advise him to separate from his employment. The claimant spoke with Cahco and explained he was having ongoing

medical issues, would be seeing other doctors, and did not know when he would be able to return. Cahco told him to bring in a doctor's note.

On October 22, 2015, at 11:22 a.m., the claimant contacted Cahco to ask her to complete a form stating he no longer worked for the employer so his rent would be reduced. The claimant said, "I'm done with you guys since I pointed out or whatever." (Employer's Exhibit 1.) Cahco explained the claimant had not been discharged as they were waiting on additional doctor's notes. She then asked if he was voluntarily quitting his employment and he said yes.

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

For the reasons that follow, the administrative law judge concludes the claimant was not discharged and instead voluntarily quit his employment without good cause attributable to the employer. Benefits are denied.

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 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 unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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 argued he was discharged when he spoke to Cahco on October 19, 2015 when she gave him the option of voluntarily quitting or pointing out. The employer has argued that the claimant voluntarily quit his employment. 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 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. *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. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible and the claimant voluntarily quit his position. The employer provided an email sent by Cahco nine minutes after her conversation with the claimant. It was a document kept in the normal course of business. Cahco stated to the claimant he was not discharged and the claimant confirmed he voluntarily quit his employment. Therefore, the claimant expressed an intent to discontinue the employment relationship and engaged in an overt act to carry out that intent.

Iowa Code § 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(17), (23), (29) and (35) 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:

(17) The claimant left because of lack of child care.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The 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). The claimant has argued numerous reasons for his decision to voluntarily leave his employment. However, based on the conversation he had with Cahco on October 22, the claimant merely wanted to discontinue his employment with the employer. He had a misguided notion he had been discharged, which Cahco explained was incorrect. The claimant then made the decision to end his employment.

The claimant has indicated he quit his job due to an illness among other reasons. The administrative law judge does not find the claimant’s argument that his illness or injury was work related to be persuasive. The claimant is arguing the stress caused by not being laid off and continuing to have a job caused him to have a “mental breakdown.” He then argued that what prevented him from going to work for an indefinite period of time was an allergic reaction akin to hives. The claimant’s illness was not related to his work. Accepting the claimant’s argument that his decision to voluntarily quit his employment was due to illness or injury, the claimant failed to obtain the advice of a physician before voluntarily quitting due to a non-work-related illness or injury. The claimant has also argued he left work due to a substantial change in his home life due to the potential layoff as his wife, who had been a stay-at-home mother, took a job outside the home. While the claimant’s decision to leave his employment may have been based upon his own personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

**DECISION:**

The November 3, 2015, (reference 01) unemployment insurance decision is affirmed. The 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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