

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SANDRA C ULWELLING
Claimant

PRO-NET FARMS INC
Employer

APPEAL 20A-UI-15291-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/16/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Sandra C Ulwelling, the claimant/appellant, filed an appeal from the November 9, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2021. Ms. Ulwelling participated and testified. Melissa Ackerman testified on Ms. Ulwelling's behalf. The employer participated through Mick Ekren, human resources manager and Larnace Christensen, manager. Claimant's Exhibit A and Employer's Exhibit 1 were admitted into evidence.

ISSUE:

Was Ms. Ulwelling laid off, discharged for misconduct or did she voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ulwelling began working for the employer on September 3, 2018. She worked as a full-time herds person. Her last day of work was August 3, 2020.

The employer's policy provides that three consecutive No-Call/No-Shows will result in a voluntary quit. Employer's Exhibit 1. Ms. Ulwelling acknowledged received a copy of the policy on September 4, 2018.

On the evening of August 3, Ms. Ulwelling suffered a mental health breakdown. A police search was called to find Ms. Ulwelling. During the search, the police and Ms. Ackerman contacted Mr. Christensen to learn if Ms. Ulwelling was at the worksite. She was not. Ms. Ulwelling was found that evening and given the choice of either going to jail or going to a hospital for a 72-hour psychiatric hold. Ms. Ulwelling chose the hospital and was taken to a hospital that evening. Sometime that evening, Mr. Christiansen learned that Ms. Ulwelling had been found and that she had been taken somewhere. He did not know where she had been taken.

Ms. Ulwelling was scheduled to work on August 4, 5 and 6. She did not show up at work any of these days and she did not call in before her shifts. Ms. Ulwelling did not have access to her phone while she was on the 72-hour psychiatric hold, which had begun on the evening of August 3.

On August 4, Mr. Christensen and the overseer of the farm spoke with Krystal Crews, Ms. Ulwelling's daughter who also worked for the employer, about what was going on with Ms. Ulwelling. Ms. Crews told the employer that she could not provide any information because she wasn't able to talk with Ms. Ulwelling.

On August 6, Ms. Ekren sent Ms. Ulwelling a letter telling her that the employer had not heard from her since August 3 and asking her to contact the employer immediately as her job was in jeopardy. The afternoon of the same day, Ms. Ulwelling's phone was returned to her. Ms. Ulwelling contacted Ms. Ekren and let her know that Ms. Ulwelling was in the hospital.

On August 11, Ms. Ekren mailed Ms. Ulwelling a letter informing her that her employment was terminated effective that day for three consecutive No-Call/No-Shows. Ms. Ulwelling was released from the hospital that same day. Ms. Ulwelling called Ms. Ekron on her way home from the hospital and let her know that she would be at work the next day, August 12. Ms. Ekren told Ms. Ulwelling to talk with Mr. Christensen before she returned to work. Ms. Ekren did not tell Ms. Ulwelling that her employment had been terminated. Ms. Ulwelling called Mr. Christensen who informed her that her employment was terminated. Ms. Ulwelling received the termination letter on August 13.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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) 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:

...

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience.

In this case, Ms. Ulwelling did not attend work and did not call in for three consecutive days. The employer was aware that something was happening with Ms. Ulwelling from the police and Ms. Ackerman contacting Mr. Christensen on August 3 to learn if Ms. Ulwelling was at the worksite. The employer also tried to get information about Ms. Ulwelling from Ms. Crews and sent Ms. Ulwelling a letter asking her to contact them. Ms. Ulwelling did contact the employer as soon as she was able to on afternoon of August 6. Unfortunately, Ms. Ulwelling was too late as she had already missed three consecutive days and had not called in before those three shifts. While Ms. Ulwelling's absences 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 are denied.

DECISION:

The November 9, 2020, (reference 01) unemployment insurance decision is affirmed. Ms. Ulwelling voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Daniel Zeno
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February 12, 2021
Decision Dated and Mailed

dz/kmj