IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU

SHANNON S ARNOLD Claimant **FOPS PLUMBING & HEATING LLC** Employer	**APPEAL NO. 24A-UI-04226-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/17/24** **Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On April 29, 2024, Shannon Arnold (claimant) filed a timely appeal from the April 24, 2024 (reference 04) decision that disqualified him for benefits and that relieved the employer's account of charge for benefits, based on the deputy's conclusion that Mr. Arnold had voluntarily quit on January 10, 2024 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 14, 2024. Mr. Arnold participated. Amber Wilson represented the employer and presented additional testimony through Jeffrey Grabau. Exhibits A and B were received into evidence.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or 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:

Shannon Arnold (claimant) was employed by FOPS Plumbing & Heating, L.L.C. as a full-time HVAC installer. During Mr. Arnold's employment, the company consisted of five people. Mr. Arnold began the employment in 2018 and last performed work for the employer on the morning of Friday, January 5, 2024. Jeffrey Grabau is the business owner and was Mr. Arnold's supervisor throughout the employment. Amber Wilson joined the employer in July 2023 as Office Manager and thereafter functioned as a secondary supervisor. Mr. Arnold generally worked a Monday through Friday work schedule. The workday would start at 7:45 a.m. at the employer's shop in Davenport. The work crew would then proceed from the employer's shop to the first customer jobsite of the day. The workday would end at about 4:30 p.m., whenever the day's work was completed. Ms. Wilson would usually send a group text message before the crew arrived at the employer's shop to start of the workday. Mr. Grabau would usually follow up with a telephone call to Mr. Arnold about the day's work.

When Mr. Grabau called Mr. Arnold at the start of the workday on January 5, 2024, he suspected that Mr. Arnold was under the influence of alcohol. Mr. Grabau and Mr. Arnold have a long-standing friendship that predates Mr. Arnold's employment. Mr. Grabau was aware that Mr. Arnold had an ongoing issue with alcohol abuse that periodically impacted the employment. On January 5, 2024, Mr. Grabau noted that Mr. Arnold was slurring his speech. Mr. Grabau asked Mr. Arnold whether he was "f**ked up." Mr. Grabau denied that he had consumed alcohol and implausibly asserted he was groggy because he had taken a sleeping pill the previous evening.

After Mr. Grabau's call with Mr. Arnold, Mr. Grabau directed Ms. Wilson to go to the jobsite in Bettendorf to conduct a breath alcohol test on Mr. Arnold and to transport Mr. Arnold home. The employer lacks a written drug and/or alcohol policy. Neither Mr. Grabau nor Ms. Wilson has participated in training to determine whether someone is under the influence alcohol and/or drugs. Nor have they participated in training related to drug or alcohol testing. The employer purchased a breath alcohol screening device online. There is no indication that the screening device was a reliable tool for measuring breath alcohol content. There is no indication that the device met the standard for such devices set forth at Iowa Code section 730.5(g)(2) or the federal Omnibus Transportation Employee Testing Act of 1991.

When Ms. Wilson arrived at the Bettendorf jobsite, she summoned Mr. Arnold to her vehicle and had him blow into the breath alcohol screening device. Ms. Wilson smelled an odor of vodka coming from Mr. Arnold's person. Ms. Wilson observed as Mr. Arnold blew into the device in a manner designed to manipulate and lower the measurement. When Ms. Wilson had Mr. Arnold blow into the device a second time, Ms. Wilson observed as Mr. Arnold intentionally pushed the off button on the side of the device. On the third attempt, the device registered 0.59. Ms. Wilson does not know what unit of measurement the device was using or was designed to use. During this contact, Mr. Arnold conceded that he had been drinking the previous evening but asserted he had stopped "early." Ms. Wilson did not press Mr. Arnold on what he meant by early. Mr. Arnold asserts he was hungover, but denies that he was intoxicated. Regardless of the reliability of the breath alcohol screening device, the employer reasonably concluded that Mr. Arnold had reported to work that morning under the influence of alcohol.

As Ms. Wilson transported Mr. Arnold home, Mr. Arnold made multiple phone calls during the 25-minute trip. During one call, Mr. Arnold asserted to the person on the phone that he had just been fired. Ms. Wilson interjected that Mr. Arnold knew he was not fired. When Ms. Wilson and Mr. Arnold arrived at Mr. Arnold's home, Ms. Wilson told Mr. Arnold to have a nice day and to give her a call, meaning to give her a call when he was no longer impaired.

On January 5, 2024, Mr. Arnold looked at Mr. Grabau's Facebook page and observed that Mr. Grabau had posted a notice that his company was looking to hire an HVAC tinner (installer). Mr. Arnold assumed that meant he was fired. A reasonable person would conclude the employer was indeed attempting to recruit a replacement installer. Two weeks earlier, Mr. Grabau had told Mr. Arnold that if he showed up for work under the influence of alcohol again, he would have to take a $15.00 an hour pay cut in order to continue in the employment. The employer did not revisit that conversation in connection with sending Mr. Arnold home on January 5, 2024. Mr. Arnold asserts that he "assumed" he was discharged from the employment, but a reasonable person would not have assumed that.

On Monday, January 8, 2024, Mr. Arnold did not report to the workplace. On that morning, Ms. Wilson did not send the usual group chat/text message to Mr. Arnold. Nor did Mr. Grabau call Mr. Arnold. At 9:01 a.m., Ms. Wilson sent a text message to Mr. Arnold: "Good morning. I take it you're quitting. I called you twice. Call when you can." At 9:22 , Mr. Arnold sent his

response, “I would have gotten a text on the group text like I do every day if I was expected to be at work today.” At 9:24 a.m., Ms. Wilson replied that she had not sent a group text that morning and had instead given instructions at the shop. At 9:26 a.m., Ms. Wilson sent another text in which she stated Mr. Arnold had failed to appear at the shop at 7:45 a.m. for work and further asserted that Mr. Arnold’s absence had nothing to do with the absence of a group text. Even after that contact, Mr. Arnold did not report for work. At 4:45 p.m., Mr. Arnold sent a message asking Ms. Wilson whether paychecks had been deposited. Ms. Wilson responded that the checks would not be deposited until the following day.

On Tuesday, January 9, 2024, Mr. Arnold did not report for work and did not make contact with the employer. The employer lacks an attendance policy or absence reporting policy.

On Wednesday, January 10, 2024, Mr. Arnold again did not report for work and did not contact the employer. At 9:07 a.m., Ms. Wilson sent a text message to Mr. Arnold, in which she stated that since Mr. Arnold was again a no-show for work that morning, the employer determined that he had abandoned the employment. Ms. Wilson added that Mr. Arnold was not eligible for unemployment insurance benefits. Mr. Arnold did not respond and did not make further contact with Ms. Wilson until February 28, 2024. Mr. Arnold did not make further contact with Mr. Grabau until March 11, 2024.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 87124.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 87124.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 87124.25.

When a claimant was absent for three days without giving notice to employer in violation of company rule, the claimant is presumed to have voluntary quit without good cause attributable to the employer. See Iowa Admin. Code rule 87124.25(4).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O’Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993).

The weight of the evidence establishes a voluntary quit. The employer’s decision to remove Mr. Arnold from the jobsite on January 5, 2024 due to Mr. Arnold’s impaired state and the safety risk it posed did not amount to a discharge from the employment. Nor did the employer’s decision to advertise for a potential replacement for Mr. Arnold communicate a discharge. The employer’s deviation from the morning communication routine did not indicate a discharge. Ms. Wilson had specifically communicated during the January 5 drive to Mr. Arnold’s home that he had not been discharged. The employer may well have been examining its options and may well have hoped that Mr. Arnold would quit the employment. Regardless, the employer never communicated a discharge and there was no reasonable basis for Mr. Arnold’s purported assumption that he had been discharged. On the other contrary, Mr. Arnold failed to return to

work even after Ms. Wilson contacted him on the morning of January 8, 2024 to ask why he was not at work. Mr. Arnold elected not to report for work that day and elected not to report to work or initiate contact with the employer the next two days. At that point, the employer reasonably concluded that Mr. Arnold had abandoned the employment, regardless of whether the employer had a formal attendance policy.

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. *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.*

Where the employer's testimony diverged from Mr. Arnold's testimony, the employer's testimony was more reliable and more credible. Ms. Wilson provided candid, balanced testimony wherein she conceded deficiencies where they existed, such as in the absence of formal policies, the lack of training with regard to drug and alcohol testing and training, and the problematic screening device. On the other hand, the weight of the evidence indicates that Mr. Arnold was in fact under the influence of alcohol on January 5 and that he made inconsistent statements regarding whether and why he was impaired on January 5. These included the assertion that he had stopped drinking "early," that he was merely groggy because of a sleeping pill, and the most recent assertion that he was merely hungover. As noted, there was not a reasonable basis for Mr. Arnold's purported assumption that he was discharged. Mr. Arnold's conduct on and after January 8, 2024 indicates he knew otherwise.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

The evidence in the record indicates a voluntary quit without good cause attributable to the employer, as indicated by Mr. Arnold's three no-call/no-show absences on January 8, 9 and 10, 2024 and the underlying decision not to return to the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The April 24, 2024 (reference 04) decision is AFFIRMED. The claimant voluntarily quit the employment without good cause attributable to the employer. For unemployment insurance requalification purposes, the quit is deemed effective January 10, 2024. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

May 20, 2024
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:
1) The name, address, and social security number of the claimant.
2) A reference to the decision from which the appeal is taken.
3) That an appeal from such decision is being made and such appeal is signed.
4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at https://www.legis.iowa.gov/docs/code/17A.19.pdf.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:
A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:
1) El nombre, dirección y número de seguro social del reclamante.
2) Una referencia a la decisión de la que se toma la apelación.
3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:
Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.