

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY M BOONE WALLIS
Claimant

GOODWILL INDUSTRIES OF NE IA INC
Employer

APPEAL 21A-UI-16237-JC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/04/21
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant, Goodwill Industries of NE IA Inc., filed an appeal from the July 13, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 13, 2021. The claimant, Kimberly M. Boone-Wallis, participated. The employer participated through Thomas Kuiper, a hearing representative with Talx/Equifax Workforce Solutions. Jessica Spicer testified for the employer.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer’s account be waived?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a merchandise lister and was separated from employment on July 2, 2020, when she voluntarily quit the employment. Continuing work was available.

Employer provides multiple options for employees to report complaints about the workplace, including human resources, and an anonymous hotline. Prior to quitting, claimant had made complaints regarding her manager, who she stated was negative, condescending and would

routinely yell at employees. Claimant had stated that when a picture had fallen over and broke some dishes accidentally, her manager began screaming at her, to the point that another employee came over to check on them.

Claimant had made an anonymous complaint regarding her manager and had asked that her identity remained confidential. On June 30, 2020, claimant's manager confronted her and during the conversation, raised her voice, as well as repeated phrases that claimant had used in her complaint against the manager. Claimant believed her identity had not been kept confidential and was upset with the employer as well as for her manager's continued yelling and berating of her. She subsequently quit without notice.

At the hearing, employer denied yelling or being aware of claimant's specific complaints about her during the June 30, 2020 conversation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was with good cause attributable to the employer.

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 claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit 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).

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 administrative law judge in this case took into consideration the vagueness of the employer's answers compared to the specificity of the claimant's answers, as well as demeanor during the hearing. 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 weight of the evidence in the record establishes claimant has met her burden of proof to establish she quit for good cause reasons within Iowa law.

An employee has the right to work in an environment free from repeated yelling and bullying from management. The claimant in this case followed the chain of command and voiced complaints to her manager, which continued to claimant's last day of work. The administrative law judge is persuaded if claimant had behaved as her manager did, she would have been subject to discipline in the workplace. The conduct the claimant was subjected to was severe and recurring. An employee also has the right to expect that management when notified about such conduct will take reasonable steps to end the harassment. Under the facts of this case, a reasonable person would conclude that the working conditions the claimant was subjected to were intolerable and were not effectively remedied at the point the claimant resigned. Based on the evidence presented, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer, and benefits are allowed, provided she is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

Because claimant is allowed regular unemployment insurance benefits, she is also eligible for Federal Pandemic Unemployment Compensation (FPUC) . See: PL116-136, Sec. 2104. Employer is not charged for these benefits.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The July 13, 2021 (reference 01) initial decision is AFFIRMED. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Claimant is not overpaid benefits. Claimant is eligible for FPUC, provided she is otherwise eligible for regular benefits. Employer is not relieved of charges related to regular state funded unemployment insurance benefits.

Jennifer L. Beckman

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September 23, 2021
Decision Dated and Mailed

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