

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CONNIE K MIKESH
Claimant

STRATEGIC FINANCIAL PARTNERS LLC
Employer

APPEAL 17A-UI-04833-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/16/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 5, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 24, 2017. The claimant participated personally. The employer participated through Darrin Juve. Claimant Exhibit A was admitted into evidence.

The administrative law judge took official notice of the administrative records including the fact-finding documents. 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.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

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 recruiter and was separated from employment on April 20, 2017, when she quit the employment without notice. Continuing work was available.

On the claimant's final day of employment, she arrived around 7:20 a.m. and left around 7:30 a.m. The claimant's niece also worked for the employer, and had just been discharged by the employer. This upset the claimant, causing her to cry and fear that she was next to be fired. Katherine. Whitsitt, the claimant's supervisor, had asked to speak to her downstairs, privately, to assure her that she recognized how hard it must be to see her niece fired, but that her job was stable, she was valued, and even could take some time off for the day if she needed to regroup. The conversation never occurred because the claimant simply left without explanation.

The claimant stated she quit because she was so upset and remained upset for an entire week thereafter. The claimant stated prior to quitting, she believed she was being set up for failure by Ms. Whitsitt, who became her supervisor in early 2017 after a reorganization of staff by the

employer. According to the claimant, Ms. Whitsitt would watch employees, send out emails to other employees asking them to stop talking and to return to their work stations, and would encourage employees to stop working temporarily to participate in team building via chair races. She felt she was being set up for failure. Prior to Ms. Whitsitt's arrival, the claimant and others frequently went directly to Mr. Juve for daily questions, and upon her arrival and at Mr. Juve's directive, employees were told by Ms. Whitsitt to go to her directly and "not email or mess with Darrin "(Juve)". The claimant interpreted this comment to mean she could not report any work related concerns to him that she may have had with Ms. Whitsitt. As a result, she did not make the employer aware of her issues with Ms. Whitsitt prior to resigning.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was 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(22) 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:

- (22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(27) 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:

- (27) The claimant left rather than perform the assigned work as instructed.

Iowa Admin. Code r. 871-24.25(28) 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:

(28) The claimant left after being reprimanded.

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 871 IAC 24.25. "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). 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.* After assessing the credibility of the claimant 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 illegal, intolerable and/or detrimental working conditions that would cause a reasonable person to quit the employment without notice.

In this case, the claimant quit after her niece, who was her co-worker, was unexpectedly discharged. Understandably, the claimant was upset for her. When the employer asked the claimant to meet with her, she incorrectly assumed she was going to be immediately fired and left without speaking to the employer, or voicing any concerns, stating she was so upset. Had she attended the meeting, her manager would have reassured her of her job security and intended to offer her time to collect herself after learning of her niece's departure. Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer.

The claimant asserted the ongoing treatment of Ms. Whitsitt, punctuated by the firing of her niece, had affected her decision to quit. An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. _-

___/___-___, Iowa Ct. App. filed ___, 1986). Based on the testimony offered at the hearing, the claimant had not adjusted well to Ms. Whitsitt's management style, which encouraged productivity and team building, and to utilize the chain of command, which included her as the point of contact, rather than Mr. Juve, who previously had been. The administrative law judge is not persuaded the conversation, words used or conditions between the claimant and Ms. Whitsitt were inappropriate, given her level of authority, nor were they ever escalated to a point that would be deemed harassment or a hostile work environment, but rather due to personality conflict.

Rather, the credible evidence presented supports the claimant quit the employer because she was upset that her niece was fired, and did not agree with the supervisor about various issues. While the claimant's reasons for leaving the employment may have been good, personal reasons, they were not for a good cause reason attributable to the employer. Benefits are denied.

DECISION:

The May 5, 2017, (reference 01) decision is affirmed. The claimant voluntarily left the 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn