

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA S SIMAR
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 17A-UI-08377-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/18/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 11, 2017 (reference 06) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit work by failing to notify his temporary employment firm within three working days of completing his last work assignment. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2017. The claimant, Joshua S. Simar, participated. The employer, Advance Services, Inc., participated through Melissa Lewien, Risk Management. Employer's Exhibit 1 was received and admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a packaging employee assigned to work at Ferrera Candy, from June 20, 2017, until July 12, 2017, when he quit effective immediately. Claimant notified management at Ferrera Candy that he was unable to continue working at the assignment due to family issues. Claimant explained that he has extensive involvement with the Department of Human Services, and the physical and mental stress of his situation prevented him from working. Claimant never contacted the employer to ask for an additional assignment or request a position that would accommodate his schedule and personal life situation. Claimant had previously worked at Ferrera Candy, both on assignment from this employer and as a full-time employee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was without good cause attributable to the employer. Benefits are withheld.

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 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: ...

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

...

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

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 testimony credible. Lewien provided reasonable and consistent statements regarding the end of claimant's employment. Claimant alleges he was subjected to dangerous working conditions and was required to work a grueling schedule. Claimant's testimony is not consistent with any other evidence in the record. Additionally, claimant provided contradictory reasons for leaving the employment, which led the administrative law judge to question his truthfulness.

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 credible evidence in the record shows that claimant left his employment due to a stressful personal life situation that is in no way attributable to his employer. 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). Claimant notified his assignment site that he was ending his employment and he never returned to work. While claimant may have had compelling personal reasons for leaving his employment, his decision to quit was not for a good-cause reason attributable to the employer. Benefits are withheld.

DECISION:

The August 11, 2017 (reference 06) unemployment insurance decision is affirmed. Claimant separated from 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn