

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNDI L STUEKERJUERGEN
Claimant

BRADS PAD INC
Employer

APPEAL 19A-UI-00997-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/06/19
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 25, 2019 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit because she was dissatisfied with her working conditions. The parties were properly notified of the hearing. A telephonic hearing was held on February 20, 2019. The claimant, Cyndi L. Stuekerjuergen, participated along with witness Doris Stuekerjuergen. The employer, Brad's Pad, Inc., participated through Brad Stuekerjuergen, Owner and Manager; and Bonny Stuekerjuergen, Part Owner. Claimant's Exhibits A and B and Employer's Exhibits 1, 2, and 3 were received and admitted into the record.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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 daytime manager, from the second week in July 2018 until December 4, 2018. On October 31, 2018, claimant sent Mr. Stuekerjuergen a message stating, "I'm tired of being the bad guy. Here's my notice 12/1/18." Claimant admits that she intended this to be her one month notice that she was quitting her position with the employer. Claimant was frustrated with numerous issues at the restaurant and with Mr. Stuekerjuergen's unavailability for a meeting with her to discuss these issues.

Roughly one week before Thanksgiving, claimant and Mr. Stuekerjuergen were working together at the restaurant. Mr. Stuekerjuergen asked claimant if she was still leaving effective December 1. Claimant responded by asking if he had found anyone to replace her, and he said he had not. Claimant then replied that she was still looking for different employment but she would not leave on December 1, as there was no one hired to replace her. Claimant also expressed on other occasions during conversations with Mr. Stuekerjuergen and Ms. Bonny

Stuekerjuergen that she would stay in her position until she found another job or until the employer hired someone to replace her.

Claimant had a conversation with Ms. Bonny Stuekerjuergen on December 2, 2018. That day, claimant was frustrated and overwhelmed with issues in the workplace. She reiterated to Ms. Bonny Stuekerjuergen that she was quitting her employment, and she commented that she would rather sell drugs than work for Mr. Stuekerjuergen any longer. On December 4, 2018, Mr. Stuekerjuergen sent claimant a text message letting her know that he had found a replacement for her. He stated, "Will need your key on wend. I found someone to take your [place]." Claimant never returned to work after this date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant separated from employment 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.

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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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998).

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 version of events more credible than claimant's version of events. The administrative law judge found Bonny Stuekerjuergen's testimony credible, as she vividly recalled the specific comment claimant made at the end of November when claimant reiterated her intent to quit. The credible evidence in this case reflects that claimant quit her employment.

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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation...

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). Here, claimant submitted a resignation via text message and this resignation was accepted by her employer. The credible evidence shows claimant never rescinded that resignation. While she may have extended her employment beyond the day she first anticipated ending her job, she maintained a desire to resign and did not take steps to retract the text resignation that she sent to Mr. Stuekerjuergen.

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). Claimant quit her job because she disagreed with management's decisions and disliked her work environment. Part of claimant's struggle in her work environment stemmed from the fact that she worked for and with her family members. Working with family members or significant others can pose unique challenges in the workplace, where the lines of professional and personal relationships understandably can become blurred. Here, while claimant was understandably frustrated, she has not established a good cause reason for quitting that is fairly attributable to the employer. Claimant's decision to end her employment was without good cause attributable to the employer. Benefits are withheld.

DECISION:

The January 25, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant separated from 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn