

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWN M BALAGNA
Claimant

THE HON COMPANY
Employer

APPEAL 18A-UI-01301-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/14/17
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin Code chapter 25- Benefit payment control

STATEMENT OF THE CASE:

The claimant/appellant, Shawn M. Balagna, filed an appeal from the January 16, 2018, (reference 06) unemployment insurance decision that denied benefits based upon separation. A first hearing was scheduled with administrative law judge, Duane Golden, on February 21, 2018. The hearing was continued by the Agency to Workforce Program Coordinator, Mary Piagentini, to have an opportunity to participate.

The parties were properly notified about the second hearing. A telephone hearing was held on March 22, 2018. The claimant participated personally and through Matt Denning, attorney at law. Workforce Program Coordinator, Mary Piagentini, also participated. The employer participated through Marlene Sartin, hearing representative with Employer's Edge LLC. Lucas Knox, MCR representative, testified for the employer. Department Exhibit A and Claimant Exhibit B were 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.

ISSUES:

Did the claimant voluntarily quit the employment from The Hon Company with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of May 14, 2017. The claimant filed his claim in response to his separation at Krieger Motor.

The claimant was employed from July 10, 2017 through July 12, 2017, as a full time painter, until he quit his employment without notice. Continuing work was available. The claimant did not tour the painter's booth where he would be working before hire. He was provided ear

protection in the form of ear plugs for the job site. The claimant has documented hearing impairment, which is noted on his driver's license (Claimant Exhibit B) and medical documentation (Claimant Exhibit B). He is medically deaf. After performing work on July 11, 2017, the claimant reported his ears were ringing and he experienced a loss of hearing for several hours. Before his shift on July 12, 2017, the claimant went to human resources and explained his concerns about the work conditions being too loud with the existing ear protection. The claimant was not offered any accommodation or that he could purchase his own additional ear protection, such as "ear muff" type ear plugs. Rather, he was informed that there was nowhere in the plant that would be quieter than the painter's booth. Accordingly, the claimant quit the employment because it caused pain to his ears.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. 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.* "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).

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address her concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

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 claimant has met his burden of proof to establish he quit for good cause reasons within Iowa law.

Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even if the employer is free from all negligence or wrongdoing. *Raffety v. Iowa Emp't Sec. Comm'n*, 76 N.W.2d 787 (Iowa 1956). In this case, the claimant had a known, documented medical condition related to being hearing impaired (Claimant Exhibit B). The claimant made the employer aware of it upon hire, and through providing a copy of his driver's license (Claimant Exhibit B) which confirms his hearing loss and that he is legally deaf.

Upon trying to work in the employer's premises with the provided ear protection, the claimant experienced significant pain and hearing loss. He went to human resources the next day to report the condition and that it was affecting his ability to continue employment. The claimant was not provided any accommodation (such as ear muff type ear plugs) but rather informed there was no quieter department the claimant could work at the plant. Accordingly, the claimant chose to quit rather than be subjected to aggravation of an existing and documented medical

condition. Based on this record when viewing it as a whole, the claimant's quit is directly attributable to the work environment, which aggravated his personal health condition. The claimant provided corroborating documentation to support his claim. For this reason, the administrative law judge concludes that the claimant satisfied his burden of proof. The claimant quit for good cause reasons attributable to the employer. Benefits are therefore allowed.

DECISION:

The January 16, 2018, (reference 06) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible and any benefits withheld shall be paid.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn