

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRADLY BROWN
Claimant

APPEAL 19A-UI-02599-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTROCK SERVICES INC
Employer

**OC: 03/04/18
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On March 26, 2019, Bradley Brown (claimant) filed an appeal from the March 18, 2019, reference 03, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Westrock Services, Inc. (employer) due to dissatisfaction with the terms of his employment which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on April 15, 2019. The claimant participated personally. The employer participated through Supervisor Susan Carter, Business Unit Manager Stanley Perry, and Production Superintendent Patrick Cooper. The Employer's Exhibit 1 was admitted without objection.

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 an Industrial Operator in the Shipping Department beginning on May 29, 2018, and was separated from employment on February 26, 2019, when he quit. The claimant was hired primarily to work in shipping as a forklift driver and dispatcher. There were two other employees in that department performing the same job duties when he was hired. At the time he was hired, the claimant was cross trained on the machines in the production area and would fill in for other employees as needed.

In November 2018, the employer experienced a slowdown in its production. Employees were reassigned as needed to other areas to perform work. The claimant was regularly assigned to work on the machines rather than in the shipping department. The claimant's pay did not change and his hours were not altered as a result of the change in job duties. The employer laid off some employees in January 2019.

On or about February 6, the employer met with the claimant to discuss his attendance issues as he had already used all of his vacation for the calendar year. The claimant explained it was due to his father's terminal illness and asked why he was not selected for lay off. The employer

stated it laid employees off based on business needs and he was not scheduled to be laid off. The employer did offer him a personal leave of absence which he declined. The next day, the claimant received notice from his father that his cancer had spread throughout his body. The claimant took a personal leave of absence from February 11 through February 15.

On February 25, the claimant met with Business Unit Manager Stanley Perry to express his willingness to be laid off due to his family issues. Perry again reiterated that the claimant was not slated to be laid off based on his skills and experience. The following day, the claimant resigned his position stating he was leaving because he was not performing the job duties for which he had been hired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment without good cause attributable to the employer. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

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:

...

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(21) The claimant left because of dissatisfaction with the work environment.

...

(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.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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 findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The 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). In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). However, the employer does retain the right to assign employees based on business needs.

The claimant contends he left work due to a change in his contract of hire. He argued that he was not doing the job for which he was hired. However, he testified that he had been performing the alternate job duties since the date he was hired. The hiring documents provided and the training the claimant received indicated that he would be performing some work in the production area. The claimant has not established that he experienced a drastic modification in the type of work for which he was hired. Additionally, he has not established that performing job duties in the production area versus shipping jeopardized his health, safety or morals. The claimant's separation was not due to change in his contract of hire.

The claimant left work because he did not want to perform the work as assigned, he was dissatisfied with the job environment, and due to personal family issues, which do not constitute good cause attributable to the employer. Accordingly, benefits are denied.

DECISION:

The March 18, 2019, reference 03, unemployment insurance decision is affirmed. The claimant voluntarily left the 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn