

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DETRIA D GULLY
Claimant

DOLGENCORP LLC
Employer

APPEAL NO. 18A-UI-10903-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/04/18
Claimant: Appellant (2R)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 24, 2018, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 20, 2018. Claimant participated personally and with witness Maddy Gordon. Employer participated by Penny McMillan.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 2, 2018. Claimant stopped coming to work after that date as she was uncomfortable with a co-worker that was telling claimant he was pursuing becoming a swinger and had recently begun introducing third parties into his bedroom with him and his wife.

Claimant and employer agreed that claimant came to employer with her complaints about this co-worker. Employer stated that she spoke with the co-worker and told him to quit these conversations. Claimant stated that the co-worker kept sharing his feelings about his new sexual life up until claimant's date of quit. Claimant stated that she continued to be made uncomfortable by the co-worker's ongoing stories and that employer did not set up the schedule such that she did not have to work with the co-worker.

Claimant had recently begun attending school and recently had a child and was a single mother of three.

REASONING AND CONCLUSIONS OF LAW:

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.

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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. In this matter, the administrative law judge was not comfortable with the credibility of any of the witnesses. Employer's witness did not know the months of employment, last day of work, schedule of claimant or schedule of the offending co-worker. Employer gave testimony that she spoke with the co-worker about his offending statements, but gave no attention to a follow-up. Claimant did also bring in another co-worker who testified that the man continued to tell of his escapades up until claimant's date of quit. Although all parties gave questionable and incomplete testimony, the administrative law judge determines whether claimant has shown that she quit her job for good cause attributable to employer. The administrative law judge finds that she did.

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. IA Dept. 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 test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* In this matter, claimant went to employer with her complaints. At that time, it was incumbent of employer not only to talk with the offending co-worker, but also to check with claimant to ensure that the requested changes had in fact been made and claimant was no longer forced to endure the ongoing statements. Employer did not do this, and when she neither shared with claimant that she'd addressed the matter with the offender nor asked claimant if she'd received any additional offensive comments, nor made changes in the schedule to accommodate claimant's discomfort. As employer did not show claimant that her reasonable requests were being addressed, claimant's quit was for good cause attributable to employer. Benefits are allowed as long as claimant is otherwise eligible.

As claimant is a student and a new mother, it is unknown whether claimant remains able and available for work. This matter will be remanded to the fact finder on this issue.

DECISION:

The decision of the representative dated October 24, 2018, reference 04, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

This matter shall be remanded to the fact-finder for exploration of whether claimant is able and available for work.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn