

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATIE J POHL

Claimant

APPEAL 21A-UI-03212-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCKEE AUTO CENTER INC

Employer

OC: 11/15/20

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 14, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 18, 2021, at 11:00 a.m. Claimant participated. Employer participated through Debbie McKee, Owner. No exhibits were admitted. Official notice was taken of the administrative record

ISSUE:

Whether claimant's separation was a voluntary quit without 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 as a full-time Warranty Administrator from September 4, 2020 until her employment with McKee Auto Center ended on November 13, 2020. Claimant worked Monday through Friday from 8:00 a.m. until 5:00 p.m. Claimant's direct supervisor was James Hidy, Service Manager.

On November 11, 2020, a coworker asked claimant about going "up to my office and be unprotected." The coworker was pulling on his face mask at the time he made the comment. The comment made claimant uncomfortable, so she left the area. Later that same day, claimant asked to meet with Debbie McKee, Owner, about her coworker's comment.

On November 12, 2020, McKee met with claimant to discuss the comment; McKee also met with the coworker who said he was teasing and the comment "came out wrong." McKee took disciplinary action with regards to the coworker.

On November 13, 2020, claimant emailed employer a resignation effective immediately. Employer had continuing work available for claimant if she had not quit. Claimant's job was not in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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 standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Where a claimant gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.25(6), (21) provide:

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:

(6) The claimant left as a result of an inability to work with other employees.

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

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony to be more credible than the claimant's testimony. Claimant alleges that she quit because she did not want to return to sharing an office with the coworker at issue after employer ended its social distancing policy in the workplace. McKee credibly testified that she was making other arrangements for claimant to not return to an office with her coworker and that she communicated her plans to claimant.

Claimant's written resignation is both evidence of her intention to sever the employment relationship and an overt act of carrying out her intention. Claimant voluntarily quit her employment. Claimant alleges that she quit her job due to sexual harassment by a coworker. However, the behavior that claimant describes would not cause the average person to leave employment and does not rise to the level of intolerable or detrimental working conditions. Claimant has not met her burden of proving she voluntarily quit her employment for good cause attributable to employer. Benefits are denied.

DECISION:

The January 14, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Adrienne C. Williamson
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March 30, 2021
Decision Dated and Mailed

acw/scn