

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARISSA J MARX
Claimant

IA DEPT OF CORRECTIONS/FT MADISON
Employer

APPEAL 20A-UI-11316-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Carissa J. Marx, filed an appeal from the September 4, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 5, 2020. The claimant participated personally. The employer, Iowa Department of Corrections, participated through Barbara Buss, hearing representative for Corporate Cost Control. Diane Burgess and Doug Bolton testified.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. 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.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to 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 a correctional officer and was separated from employment on June 21, 2020, when she quit the employment. Claimant last performed work on May 9, 2020 and was on FMLA at the time she quit. Continuing work was available.

Claimant quit based upon working conditions with a co-worker. This co-worker had dated another co-worker and repeatedly contacted claimant about questioning if she was having relations with him. The co-worker would contact claimant via the employer’s instant message tool. Claimant tried to ignore the co-worker and gossip about her, and did not report the co-worker until two physical confrontations occurred.

The first occurred on November 25, 2019, when the co-worker “shoulder checked” the claimant in the hallway as she was walking past her and to the parking lot. Claimant reported the conduct to her captain/manager at the time and no action was taken. Then on December 17,

2019, claimant was confronted in the locker room by the same co-worker, who said, "Move, you bitch" and shoulder checked her again. Claimant reported the conduct to management who asked if claimant wanted to escalate the matter to the Department of Administrative Services (DAS). Claimant did report the incident. Claimant asked to be moved so she didn't have to work in the same physical vicinity and shift as co-worker, but no changes were made. Claimant asserted the co-worker had to pass her at the reception area to get to her assigned post. The co-worker was then placed on an administrative leave from February 15, 2020 until April 8, 2020.

The co-worker returned to work after her administrative leave, and claimant asked to be reassigned or not have to work with her. Claimant stated she continued to feel scared and uncomfortable with having to work near her. Claimant was told she had to deal with it. Claimant was discouraged by employer's dismissal of her concerns, in light of two confirmed incidents of confrontation (Employer Exhibit 1). While taking a personal leave of absence, claimant decided she could not return and quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was with good cause attributable to the employer.

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.

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

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.*

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.*

In the case at hand, the claimant appeared personally, provided sworn testimony, answered questions, and subjected herself to the possibility of cross-examination. In contrast, the only employer's evidence was primarily based upon hearsay or business records. Both employer witnesses had limited personal knowledge of the circumstances leading to separation. In the absence of any other evidence of equal weight either explaining or contradicting the claimant's testimony, it is held that the weight of evidence is established in favor of the claimant. 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 weight of the evidence in the record establishes claimant has met her burden of proof to establish her quit for good cause reasons within Iowa law.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. 871 IAC 24.26(4). 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 his 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."

The claimant in this case had two confrontations, involving a co-worker who believed the claimant was involved with the co-worker's ex-boyfriend (who also happened to be a co-worker). The co-worker confronted the claimant on the employer's instant messaging tool, and twice physically confronted her with a physical "shoulder check." The co-worker also called the claimant a bitch. When claimant asked to not work with the co-worker, she was told to "deal with it" and required to continue working the same shift/location as the co-worker. Even if the claimant didn't have to physically walk past the co-worker each day, based upon the locations of the shoulder check incidents being en route to the parking lot and in the locker room, the co-worker could have continued to make unwanted contact or confront her during shared shifts.

An employee has the right to work in an environment free from physical confrontations, profanity and fear of personal safety. An employee also has the right to expect that management when notified about such conduct will take reasonable steps to end the harassment. Under the facts of this case, a reasonable person would conclude that the working conditions the claimant was subjected to were intolerable and were not effectively remedied at the point the claimant resigned. Claimant has established she quit for good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The September 4, 2020 (reference 01) initial decision is reversed. The claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman

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November 10, 2020
Decision Dated and Mailed

jlb/scn