

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACOB R FOSSUM
Claimant

GREG'S LAWN SERVICE INC
Employer

APPEAL 15A-UI-13071-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/07/14
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 20, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on December 15, 2015. The claimant participated personally. The employer participated through Pam Nissen, Administrative Assistant. Greg Scharf and Zach Loeffler also participated on behalf of the employer. Claimant Exhibit A was received into evidence.

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 a commercial mower and was separated from employment on October 29, 2015, when he resigned without notice. Continuing work was available.

The evidence is disputed as to whether the claimant was requested to take a drug/alcohol urinalysis (UA) on his final day of employment. The undisputed evidence presented was that the claimant voluntarily quit his job on October 29, 2015, without notice, telling Mr. Loeffler he could no longer take it.

The claimant asserted he quit due to ongoing harassment and abuse from Mr. Loeffler, who repeatedly made comments to the claimant, which upset him. The comments included, asking if he had a girlfriend, questioning his sexual orientation, and asking whether his mommy packed his lunch, because he lived with his mother. The final comment made to the claimant that upset him was when the claimant was observed sweating profusely, Mr. Loeffler asked the claimant if he was sweating out the weekend's drugs and alcohol. Upon discussion with his family, the claimant determined he should resign.

Prior to resignation, the claimant attended monthly safety meeting, including a July 2015 meeting on harassment in the workplace. The claimant did not raise any issues about harassment or abuse with the employer prior to resigning, and could have spoken with

Mr. Scharf, the owner, or Mrs. Scharf, or Ms. Burns, in human resources. The claimant did not speak with Mr. Scharf because he did not trust him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 96.5(1) provides:

An individual shall be disqualified for benefits:

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(21) provides:

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 § 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 § 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:

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

"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). A claimant with work issues or grievances must make some effort to provide notice to the employer to give the employer an opportunity to work out whatever issues led to the dissatisfaction. Failure to do so precludes the employer from an opportunity to make adjustments which would alleviate the need to quit. *Denvy v. Board of Review*, 567 Pacific 2d 626 (Utah 1977).

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 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 claimant resigned due to ongoing comments made in the

workplace. The claimant worked for nearly a year and a half, under the same conditions, and during the period of employment, did not make the employer aware of his concerns. Given the stale dates of the other complaints, they are not individually addressed as the claimant acquiesced to them by not raising concerns with his supervisor or quitting earlier when they arose. Further, the administrative law judge concludes a reasonable person would not resign without notice over an offhand remark about sweating off alcohol, without making an attempt to raise concerns or preserve employment. Based on the evidence presented, the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The November 20, 2015, (reference 01) 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css