

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES H SHELLEY
Claimant

DES MOINES COUNCIL OF ST VINCENT
Employer

APPEAL 20A-UI-11803-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On September 23, 2020, Des Moines Council of St Vincent (employer/respondent) filed an appeal from the September 17, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant voluntarily quit work on June 26, 2020 for good cause attributable to employer.

A telephone hearing was held on November 17, 2020. The parties were properly notified of the hearing. Employer participated by Retail Director Jessica Dobs. James Shelley (claimant/respondent) participated personally.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a part-time retail department worker. Claimant's first day of employment was September 4, 2019. The last day claimant worked on the job was June 24, 2020. Claimant's immediate supervisor was Debra Pane. Claimant separated from employment on June 26, 2020. Claimant resigned on that date.

Claimant resigned due to poor treatment from coworkers, which he had brought to employer's attention on numerous occasions but which had gone largely unaddressed. Claimant first began experiencing this treatment a couple months after he began working there. This included coworkers directing claimant in how to perform his work when they were not empowered to do so. For example, shortly after he started he bought an item that had been donated to the store. The following day a coworker told him he had to return the item because her family member wanted it. Claimant declined to do so and the coworker became upset with him.

The final incident leading to claimant's resignation occurred on June 24, 2020. On that date, claimant was assisting in unloading a truck from another store. At this same time, customers were bringing in regular donations. A coworker became upset with claimant because she believed he was not performing his job correctly. She raised her voice and told him he needed to do better and she and others were "not going to keep putting up with this shit." Claimant responded that he did not understand why she was upset with him, he did not appreciate her treating him in that way, and if there was an issue she should bring it to management.

Claimant brought this final incident to Pane's attention on June 24, 2020. Pane responded to claimant's concerns in a similar way as she had in the past, indicating she would take care of it. Claimant did not believe this issue would be addressed, as little had been done to address past issues he had brought to management. Claimant was next scheduled to work on June 27. He called Pane on June 26 and told her he could no longer continue working for employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the September 17, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant voluntarily quit work on June 26, 2020 for good cause attributable to employer is AFFIRMED.

Iowa Code section 96.5(1)a 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. 871-24.26 provides in relevant part:

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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

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.*

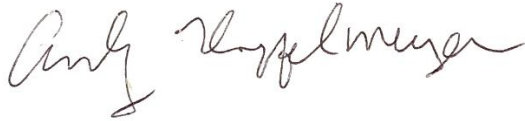
The administrative law judge found the testimony offered by claimant to be more reliable than that offered by Dobs. Factual disputes were settled accordingly. This is because claimant had first-hand knowledge of the events at issue and the administrative law judge had no reason to disbelieve his testimony. On the other hands, Dobs had limited first-hand testimony to offer. For example, Dobs was unaware of claimant's prior complaints to members of management and was unaware of claimant's calling Pane and resigning. Employer could have made individuals with first-hand knowledge of the events at issue available for the hearing but chose not to do so.

The administrative law judge finds claimant has carried his burden of proving the voluntary leaving was for good cause attributable to employer. Claimant resigned due to poor treatment from coworkers, which he had brought to employer's attention on numerous occasions but which had gone largely unaddressed. Claimant first began experiencing this treatment a couple months after he began working there. This included coworkers directing claimant in how to perform his work when they were not empowered to do so.

None of the incidents claimant described are within themselves intolerable or detrimental. However, the administrative law judge finds the incidents taken together along with employer's failure to address them do rise to a level that a reasonable person would find intolerable or detrimental.

DECISION:

The September 17, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding that claimant voluntarily quit work on June 26, 2020 for good cause attributable to employer is AFFIRMED. Claimant's separation was not disqualifying and he is therefore eligible for benefits, provided he meets all other eligibility requirements.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

November 24, 2020
Decision Dated and Mailed

abd/mh