

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COLEEN T CLOWARD
Claimant

**DUBUQUE COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 18A-UI-01725-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/07/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 29, 2018, (reference 01) unemployment insurance decision that denied benefits. Claimant mailed a letter dated March 2, 2018 requesting to withdraw her appeal. On March 5, 2018, claimant e-mailed a request to rescind her request to withdraw her appeal. Claimant's request to withdraw her appeal was rescinded and the initial telephone hearing remained set for March 8, 2018. On March 8, 2018, the hearing was postponed to April 3, 2018. The parties were properly notified about the hearing. A telephone hearing was held on April 3, 2018. Claimant participated. Employer participated through executive director of human resources Phil Kramer. Administrative assistant Mindy Klein attended the hearing on behalf of the employer. Director of payroll department Amy VanderMeulen registered for the hearing on behalf of the employer, but she did not attend the hearing. Claimant Exhibits A, B, C, D, E, F, G, and H were admitted into evidence with no objection. Employer Exhibit 1 was admitted into evidence with no objection.

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: Claimant was employed full-time as an instructional strategist 2 from August 13, 2014, and was separated from employment on December 1, 2017, when she quit. The employer did pay claimant family illness leave until December 8, 2017.

The employer has a Staff Assistance policy to address employees "whose job performance [that] has been determined not to meet criteria for a professional teacher, counselor or nurse as related to the Iowa Teaching Standards." Employer Exhibit 1. The "plan provides a more structured and intensive mode of supervision for the staff member[.]" Employer Exhibit 1. Claimant was aware of the policy.

On October 16, 2017, Mr. Kramer met with claimant and her union representative Bob Brown. During the meeting, claimant informed Mr. Kramer that she wanted to resign and get out of her contract so she could go to Michigan to take care of her mother who was having surgery. Claimant did not give Mr. Kramer any other reason as to why she wanted to resign. Claimant

did not inform Mr. Kramer about her concerns with the way the Summit Program was being administered. Mr. Kramer and claimant then discussed when her resignation date would be effective. Claimant mentioned resigning at the end of semester or around Christmas. Mr. Kramer informed claimant that if she wanted to resign earlier, he would let her out of her contract earlier. Mr. Kramer informed claimant she could make the final determination as to when her resignation effective date would be and told her to let him know.

On October 17, 2017, claimant e-mailed Mr. Kramer that her mother's surgery was now scheduled the week after Christmas. Claimant informed Mr. Kramer that her mother was concerned about her leaving her position. Claimant stated that once the surgery happens, her mother was going to need her help and her last day would be December 22, 2017. Claimant did not inform Mr. Kramer about her concerns with the way the Summit Program was being administered.

On October 19, 2017, claimant e-mailed Mr. Kramer and asked to withdraw her resignation. Claimant Exhibit H. Claimant told Mr. Kramer that her mom "feels strongly that she will manage without [her] for the time being." Claimant Exhibit H. Claimant also informed Mr. Kramer that she would be returning to Michigan at the end of the school year. Claimant Exhibit H. Claimant asked Mr. Kramer if that would be "considered resigning or just not returning for next year?" Claimant Exhibit H. Claimant did not inform Mr. Kramer about her concerns with the way the Summit Program was being administered. See Claimant Exhibit H.

On October 20, 2017, Mr. Kramer allowed claimant to withdraw her resignation. See Claimant Exhibit H. Mr. Kramer informed claimant: "If you are not returning for the next year, you would need to provide an official resignation at some point." Claimant Exhibit H. Mr. Kramer also notified claimant that the employer had concerns about her performance as a Summit teacher and she may be placed on an improvement plan. Claimant Exhibit H.

On December 1, 2017, the assistant principal Chris Oberhoffer met with claimant. Mr. Oberhoffer gave claimant a disciplinary warning for her job performance. Claimant Exhibit E. The employer warned claimant that her job was in jeopardy upon "future issues related to Standard 8 expectations[.]" Claimant Exhibit A. Claimant did not agree with the disciplinary warning. At the end of the meeting, Mr. Oberhoffer told claimant if she had any further issues, she would hear from Mr. Kramer. After claimant met with Mr. Oberhoffer, she had a phone conversation with the union president. Claimant then sent Mr. Kramer an e-mail informing the employer she wanted to "reinstate [her] request to resign" effective immediately. Claimant Exhibit H. Claimant did not give a specific reason why she was resigning. See Claimant Exhibit H. Claimant also requested "to use [her] remaining family illness days for the next week." Claimant Exhibit H. Claimant did not inform Mr. Kramer about her concerns with the way the Summit Program was being administered. See Claimant Exhibit H. Mr. Kramer accepted claimant's resignation and allowed her to use her family illness leave for the following week (claimant was paid through December 7, 2017). Claimant Exhibit H. Mr. Kramer testified he believed claimant was going to go take care of her mother. The employer had work available for claimant if she had not resigned.

Claimant testified she resigned because she did not agree with the way the Summit Program was being administered. Claimant never brought her concerns about the Summit Program to Mr. Kramer. If an employee believes that they are not being heard or if something is wrong, they can meet with Mr. Kramer to discuss the issues. Mr. Kramer testified he was not aware of claimant's concerns about the Summit Program, but he was aware of the concerns with her performance.

REASONING AND CONCLUSIONS OF LAW:

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

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 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*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits that were admitted into the record. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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.

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 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:

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

Iowa Admin. Code r. 871-24.25(22) 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 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:

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(28) 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 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:

(28) The claimant left after being reprimanded.

Iowa Admin. Code r. 871-24.25(37) 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 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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). 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).

Claimant's argument that she quit because she thought the Summit Program was not being administered in accordance with federal rules and guidelines and the employer was not providing the Summit Program students with the required education is not persuasive. It is noted that although claimant may have had concerns with the way the employer was administering the Summit Program, she did not contact the Department of Education until after she separated from employment. See Claimant Exhibit G. On October 16, 2017, claimant told Mr. Kramer, the executive director of human resources, that she was resigning because her mother was having surgery and needed her help. Claimant had a union representative present and she did not mention any concerns with the Summit Program. Claimant's mother's surgery

was the only reason she gave the employer for why she was resigning. Claimant then reinforced this reason on October 17, 2017 when she e-mailed Mr. Kramer about the surgery date and her last day would be December 22, 2017. Claimant again did not disclose any concerns about the Summit Program. On October 19, 2017, when claimant requested to withdraw her resignation, she again reinforced the reason she had wanted to resign was due to her mother. Claimant Exhibit H. Claimant again did not disclose any concerns about the Summit Program. On December 1, 2017, after claimant was given a disciplinary warning, she e-mailed Mr. Kramer and requested to “reinstate [her] request to resign” effective immediately. Claimant Exhibit H. Claimant did not give a specific reason why she was resigning in this e-mail, but did request “to use [her] remaining family illness days for the next week.” Claimant Exhibit H. Mr. Kramer’s belief that claimant was resigning to go take care of her mother was reasonable given claimant’s earlier resignation in October 2017, the lack of a different reason in her request to “reinstate” her resignation, and her request to use family illness days. See Claimant Exhibit H. It is further noted that claimant resigned immediately after she was reprimanded by Mr. Oberhoffer. See Claimant Exhibits E and H. An employee quitting after they are reprimanded is not considered a good cause reason to quit. Iowa Admin. Code r. 871-24.25(28).

Claimant has not demonstrated that a reasonable person would find the work environment detrimental or intolerable. *O’Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Claimant has not met her burden of proving that her voluntary leaving was for good cause attributable to the employer. On December 1, 2017, claimant resigned, which the employer accepted, after she was reprimanded and she did not give any new reason for her resignation and implied it was due to her mother’s surgery. While claimant’s leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The January 29, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs