

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRADLEY A HESFORD**  
Claimant

**O'REILLY AUTOMOTIVE INC**  
Employer

**APPEAL 15A-UI-13065-JP-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 11/01/15**  
**Claimant: Appellant (4-R)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 23, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2015. Claimant participated. Employer participated through store manager, Carlos Cantu. Claimant's Exhibit A 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 part time as a parts specialist from October 2013, and was separated from employment on November 5, 2015, when he quit.

Approximately a month before November 5, 2015, claimant gave the employer his two-week notice he was quitting. Mr. Cantu and claimant agreed for claimant to go to part time instead of quitting. The employer was aware that claimant and another employee, John, had issues. Claimant and John did not get along. When claimant went to part time, he usually worked the days that John did not work. John was claimant's supervisor when they worked at the same time. Mr. Cantu is John's supervisor. After going part time, there were one or two Saturdays that claimant worked with John. Claimant complained to Mr. Cantu about John smoking with the door open. Mr. Cantu spoke with John about smoking near the building. Claimant also complained about John not speaking to claimant.

On November 5, 2015, claimant told Mr. Cantu that he was done and handed Mr. Cantu his keys and quit. Claimant told Mr. Cantu that he got more hours at his other job and that he had paid off his child support and did not need this job. Claimant resigned effective immediately. Mr. Cantu knew that claimant was working for another employer. Mr. Cantu accepted claimant's resignation.

The administrative record reflects that claimant has not requalified for benefits and had other base period wages (Hy-Vee Inc., employer account number 006858-000) but the record is unclear as to whether he is otherwise monetarily eligible.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit this part-time employment without good cause attributable to the employer, but has not requalified and the record is unclear as to whether claimant is otherwise monetarily eligible after removal of these wage credits.

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 exhibit submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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(6), (22) and (37) 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 § 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:

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

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

(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 he quit with good-cause reason attributable to the employer is not persuasive. Claimant did not get along with a co-worker, John. Approximately a month prior to November 5, 2015, claimant told the employer he was going to quit, but he and Mr. Cantu agreed to have him work part time instead of quitting. A majority of the time after claimant became part time, he did not work with John. However, on November 5, 2015, claimant told the employer he quit. Claimant testified he was tired of John smoking with the door open and not talking to him. Mr. Cantu had already spoken with John about not smoking in front of the door. There is also no requirement that all employees must be friends at work. Furthermore, when claimant told Mr. Cantu he was quitting, he only said it was because he got more hours with his other employer and he had paid off his child support obligation and did not need to have this job anymore.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Claimant did not present any evidence that John would harass him at work or create an intolerable working condition. Claimant's decision to quit because he did not agree with John's actions was not for a good-cause reason attributable to the employer. 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.

Iowa Code § 96.5(1)g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Inasmuch as claimant quit without good cause attributable to the employer, the separation is disqualifying. Claimant has not requalified for benefits since the separation but may be otherwise monetarily eligible according to base period wages.

**DECISION:**

The November 23, 2015, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the part-time employment without good cause attributable to the employer and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account (number 280268-000) shall not be charged.

**REMAND:** The claimant's monetary eligibility after the quit of this part-time employment (employer account number 006858-000) as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/css