

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

REBECCA J REUTHER
Claimant

BOSS VENDING INC
Employer

APPEAL 15A-UI-14311-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/06/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 22, 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 January 19, 2015. The claimant participated personally. The employer participated through Edie Kastantin, Process Manager. Claimant Exhibit A was admitted 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 local driver and was separated from employment on December 2, 2015, when she resigned without notice (Claimant Exhibit A). Continuing work was available.

On November 30, 2015, the claimant was given a new delivery route with new stops. The claimant had previously had adjustments in her routes, depending on the needs of the employer, staffing, and customers. The claimant drove the new route for one day, with the new stops included, and reported it took her 16 hours to complete. The employer disputed the hours worked, but stated the claimant did not address any concerns related to the hours, the route, or that because of the long hours, she was not in compliance with federal Department of Transportation (DOT) regulations. The employer asserted that the new route was brand new, and while some obstacles were expected at first, the route could have been adjusted if needed.

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) and (27) 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:

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

(27) The claimant left rather than perform the assigned work as instructed.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25. "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).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

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 weight of the evidence in the record fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

In this case, the claimant resigned without notice, after the employer informed the claimant of a new delivery route. The claimant's routes were subject to change based on the employer's needs and from time to time, had been adjusted due to staff or when customers cancelled.

An employer has the right to allocate personnel in accordance with the needs and available resources. Brandi v IDJS, (Unpublished Iowa App. 1986). It is understandable that the claimant would be frustrated that her routes had changed, but the claimant did not work even one full rotation of the new route before resigning. Nor did she make the employer aware of her concerns about the routes being too voluminous, causing her work days to be too long. 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). The claimant did not make any attempts to discuss her concerns regarding the routes, hours or even possible DOT compliance, before resigning, and therefore the employer could not make any attempts to help the claimant preserve her 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 December 22, 2015, (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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css