

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EMILIO BUHR
Claimant

DAN DEERY MOTOR CO OF WATERLOO
Employer

APPEAL 24A-UI-06695-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/30/24
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quit from Employment

STATEMENT OF THE CASE:

On July 23, 2024, employer Dan Deery Motor Company of Waterloo filed an appeal from the July 19, 2024 (reference 01) unemployment insurance decision that allowed benefits, determining claimant Emilio Buhr quit his employment due to sexual harassment. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on July 26, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 9:00 a.m. on Wednesday, August 7, 2024. Claimant Emilio Buhr personally participated. Employer Dan Deery Motor Company of Waterloo participated through Randy Muller, ; Brian Jensen, ; and Courtney Decker, . Muller acted as the employer's representative. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether claimant quit his 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: Emilio Buhr began employment with Dan Deery Motor Company of Waterloo on June 10, 2024. He was hired for a full-time service technician position. Buhr's employment ended on June 29, 2024, when he quit due to his schedule and harassment.

The employer's computer in the area where claimant worked contained lewd, inappropriate content. The computer had tabs named: "Sex Time," "Dicks 2.0," "Seven Day Orgy," "Flexible Penis," "Titties," and "Cock In." The "Cock In" tab was the tab employees used to access the time clock. The other tabs led to various sites or materials needed to perform work. Buhr had to access these tabs to perform his routine job responsibilities, such as looking up parts information.

The employer's time clock app allowed employees to upload a personal picture, and some employees had uploaded pornographic or lewd images. One employee had an image of "Jesus performing oral sex on a hot dog." (Buhr testimony) Another employee had a "picture of Mario with his butt showing." Buhr saw these images every time he accessed the time clock app, and they disturbed him.

One day while at work, Buhr was talking to a coworker about the sexual harassment at work. Muller overheard and said that the behavior had been happening for twenty years and would not be stopping now. Buhr did not complain to human resources or anyone else after that. The day after Buhr talked to Muller, Buhr's coworkers gave him dirty looks and treated him differently than they had before. One coworker, Zach, approached Buhr and told him that he was going to "fuck [him] up." (Claimant testimony)

Buhr also left his employment because of issues with his work hours. Buhr was taking three summer classes, and he found it overwhelming to try and work full-time hours and maintain his studies. He talked to the employer about reducing his hours, but Decker told him that he had been hired for a full-time job so he needed to stay full time. On his last day, Buhr asked if he could leave early, and Decker told him that would not be acceptable. Buhr ended up quitting that day and leaving before the end of his shift.

Buhr opened the claim for unemployment insurance benefits effective June 30, 2024. He has filed five weekly continued claims for benefits, most recently for the week ending August 3, 2024. Buhr has received benefits in the amount of \$1,350.00 before any deductions for federal or state taxes. Iowa Workforce Development held a fact-finding interview on July 18, 2024. The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Buhr quit employment due to sexual harassment. Benefits are allowed.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Where a claimant gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.26(3) and (4) provide:

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:

(3) The claimant left due to unlawful working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find Buhr's description of his work environment vivid, detailed, and believable. This was not a single incident of harassment that could have been easily concocted by Buhr alone. Everything Buhr recalled seeing and experiencing existed on the employer's technology, either on the work computer or within the time clock app. Jensen confirmed the offensive tabs' existence on the work computer, as did at least part of Muller's internally contradictory testimony.

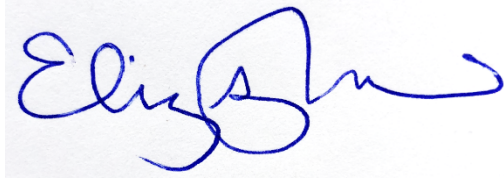
I have examined both of the reasons Buhr gave for quitting his employment. Buhr's decision to sever his employment relationship due to a work environment infected with sexual harassment is undoubtedly a good-cause reason to quit. Buhr had reported this to Muller; Muller was aware of the content on the work computer, at minimum, and he was aware that Buhr found it objectionable and that it made Buhr uncomfortable. Muller did nothing, and instead told Buhr that the employer intended to keep the work environment the way that it was. The employer's callous treatment of Buhr's concern shows a substantial disregard for their employees' welfare. Buhr has demonstrated he quit the employment with good cause attributable to the employer. Benefits are allowed.

Because claimant remains eligible for benefits based on his separation from employment, the issues of overpayment and chargeability are moot.

DECISION:

The July 19, 2024 (reference 01) unemployment insurance decision is affirmed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

The issues of overpayment and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge

August 9, 2024
Decision Dated and Mailed

lj/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.