

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GLENDAS WRAY**  
Claimant

**BETTENDORF HOME REPAIR INC**  
Employer

**APPEAL 16A-UI-12624-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/30/16**  
**Claimant: Appellant (4)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the November 17, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on December 13, 2016. The claimant, Glenda S. Wray, participated personally. The employer, Bettendorf Home Repair Inc., participated through witnesses Lenny Wilkinson; Thomas Cornwell; Shelley Moore; and Karmen Wilkinson.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as Vice President of Sales. She began working for this employer on May 13, 2005 and her employment ended on November 3, 2016. Her last day actually worked on the job was November 2, 2016. Her job duties included contract development, sales, marketing, ordering supplies, sourcing materials, organizing sub-contractors and customer service. This employer operates a general construction business. Claimant's immediate supervisor was Mr. Wilkinson.

On November 2, 2016 claimant and Mr. Wilkinson got into an argument over the telephone. The two were arguing about the door that claimant had ordered for a customer. This was a replacement door since the first door that this employer installed was incorrect. Both parties were speaking at each other with raised tones of voice. No profanity was used during the conversation. After this telephone call the claimant left the office. She returned with her written resignation letter and gave it to Mr. Wilkinson. The letter stated that she was quitting due to hostile work environment and that her last day would be November 18, 2016.

Claimant returned to work on November 3, 2016. Mr. Wilkinson was blocking claimant from being able to sit at her desk. Mr. Wilkinson asked to talk to claimant about her resignation. Claimant stated there was nothing to talk about. Mr. Wilkinson told claimant that if she really

wanted to quit there was no need for her to finish out her two week notice period. Claimant turned in her keys and left.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

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).

Iowa Admin. Code r. 871-24.26(4) provides:

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.

As such, if claimant establishes that she left due to intolerable or detrimental working conditions, benefits would be allowed. Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at

788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to her quitting. However, claimant must prove that her working conditions were intolerable or detrimental.

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 that Mr. Wilkinson's testimony is more credible than claimant's testimony as it relates to the way Mr. Wilkinson spoke to claimant over the telephone on November 2, 2016. However, claimant's testimony is more credible as it relates to the conversation the two had on November 3, 2016 when claimant was told to leave.

Mr. Wilkinson did not yell at claimant or use profanity at her on November 2, 2016. There was no credible evidence presented that there were any other incidents where Mr. Wilkinson yelled at claimant, used profanity at her or made threats of violence or other types of intolerable actions directed at claimant. Given the facts of this case, claimant has failed to prove that under the same circumstances a reasonable person would feel compelled to resign. See *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that claimant was unable to work with Mr. Wilkinson and that claimant was dissatisfied with her work environment in general. These are not good cause reasons attributable to the employer for claimant to have quit.

Iowa Admin. Code r. 871-24.25(6) 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 § 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.

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 § 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.

However, in this case claimant tendered her written resignation to Mr. Wilkinson with a separation date of November 18, 2016. Claimant was then told to leave. Claimant's advance notice of resignation caused the employer to discharge her prior to her proposed date of resignation.

Iowa Admin. Code r. 871-24.25(38) 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 § 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Claimant's decision to quit because she was dissatisfied with the work environment and could not get along with Mr. Wilkinson were not good cause reasons attributable to the employer for her to quit. Because the discharge was in response to a resignation notice, no misconduct is established. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation, which is November 18, 2016.

**DECISION:**

The November 17, 2016 (reference 01) decision is modified in favor of appellant. The claimant voluntarily left the employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed until November 18, 2016. Thereafter, benefits are withheld until such time as claimant is deemed eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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