

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE R HENNING
Claimant

APPEAL 19R-UI-10092-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

OC: 07/07/19
Claimant: Respondent (3)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the July 26, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 16, 2020. A first hearing was scheduled for August 27, 2019. The employer participated and the claimant did not respond to the notice, and did not participate. Administrative Law Judge, Blair Bennett, issued a hearing decision reversing the initial decision which had allowed benefits to the claimant. (See 19A-UI-06173-B2T.) The claimant successfully requested reopening to the Employment Appeal Board (EAB) who remanded the matter for a new hearing. After proper notice, a second telephone hearing was conducted on January 16, 2020. The claimant participated personally. The employer participated through Julie Akers.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibits 1-24 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

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 maintenance specialist II and was separated from employment on May 1, 2019, when he quit the employment. Continuing work was available.

When the claimant was hired, he was trained on the employer rules and procedures which included notifying his manager if he was going to be absent for a shift, and that three consecutive no-call/no-shows would be considered a resignation by job abandonment.

Prior to separation, the claimant had met with Ms. Akers about concerns regarding his peer, Nathan. The claimant informed Ms. Akers that Nathan had been bothering him, following him around the employer premises, throwing tools, taking the claimant's personal phone call and even shocking the claimant with wires. On April 26th, the claimant met with Ms. Akers who informed him she had completed her investigation regarding the complaints. According to Ms. Akers, the claimant seemed fine at the meeting.

When the claimant returned to work on April 26th, Nathan resumed following the claimant, saying "wherever you go, I'm going to follow you," threw tools that day and had a tantrum. Based upon the fact that the claimant had just reported Nathan and things did not improve, the claimant decided not to return to work. For the next three days, he was a no-call/no-show. After three shifts (April 29, 30 and May 1), without contact, the employer considered the claimant to have quit by job abandonment. Separation ensued.

The administrative record reflects that claimant has a weekly benefit amount of \$341.00 but has not received unemployment benefits since filing a claim with an effective date of July 7, 2019. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Ms. Akers attended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant quit the employment with good cause attributable to the employer. Benefits are allowed.

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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "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).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

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 establishes claimant has met his burden of proof to establish he quit for good cause reasons within Iowa law.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. 871 IAC 24.26(4). While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

In this case, the claimant reported his coworker's conduct to the human resources supervisor, after the coworker had taken his personal cell phone, followed him around, and threw tools in the workplace. Ms. Akers told the claimant she had conducted an investigation and it was completed on April 26, 2019. After the claimant returned to work that day, the same conduct continued with the coworker, who proceeded to tell the claimant he would follow him around and was throwing tools. Clearly, no conditions changed in response to the claimant reporting his issues. The conduct the claimant was subjected to was severe and recurring. An employee also has the right to expect that management when notified about such conduct will take reasonable steps to end the harassment. Under the facts of this case, a reasonable person would conclude that the working conditions the claimant was subjected to were intolerable and were not effectively remedied at the point the claimant resigned. The claimant has established he quit due to intolerable and detrimental working conditions. Benefits are allowed, provided he is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot. Any withheld benefits shall be paid.

DECISION:

The unemployment insurance decision dated July 26, 2019, (reference 01) is modified in favor of the claimant/respondent. The claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Benefits withheld shall be paid.

Jennifer L. Beckman
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Decision Dated and Mailed

jlb/scn