

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLEY A KINSER
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL 18A-UI-09022-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/01/18
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin Code r. 871-24.25 – Voluntary Quit Without Good Cause
Iowa Admin Code r. 871-24.26 – Voluntary Quit with Good Cause

STATEMENT OF THE CASE:

Kelley Kinser, Claimant, filed an appeal from the August 23, 2018, (reference 01) unemployment insurance decision that denied benefits because she voluntarily quit work with O'Reilly Automotive Inc. without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on September 17, 2018 at 1:00 p.m. Claimant participated. Employer participated through Tony Hummel, Store Manager, and Dave Johnson, District Manager. Employer's Exhibits 1 through 8 were admitted.

ISSUE:

Whether Claimant's separation was a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Delivery Specialist from August 6, 2018 until August 7, 2018, when she quit her employment. (Hummel Testimony; Claimant Testimony) Claimant's direct supervisor was Tony Hummel, Store Manager. (Hummel Testimony; Claimant Testimony)

Claimant was hired as a Delivery Specialist at a rate of pay of \$8.50 per hour. (Hummel Testimony; Claimant Testimony) During the interview, Claimant and the store manager reviewed the Delivery Specialist job description. (Hummel Testimony) The job description lists essential job functions as delivering parts and products to customers, picking up customer returns, maintaining driver log book, keeping vehicle secure, and reporting vehicle maintenance needs. (Exhibit 7) The job description also lists other job functions, including "other additional duties as assigned, including sweeping, straightening stock, handling core returns, checking in and putting up stock orders, etc. (Exhibit 7) Claimant acknowledged receipt and review of the job description. (Exhibit 6)

On August 7, 2018, claimant spoke to the store manager about tasks that she was being asked to perform that she did not believe were a part of her job duties. (Claimant Testimony) The additional duties included answering telephones, assisting customers when they entered the store, putting away inventory and taking daily quizzes designed to inform employees of safety procedures and product knowledge. (Claimant Testimony; Hummel Testimony) Claimant requested a raise in pay due to these job duties. (Claimant Testimony; Hummel Testimony) The store and district managers informed claimant that she was hired at an entry-level position and the rate of pay was agreed upon; employer declined to increase claimant's rate of pay. (Hummel Testimony; Johnson Testimony) Claimant asked both the store and district managers whether she would be eligible for unemployment benefits and then left the store and did not return to work. (Claimant Testimony; Hummel Testimony; Johnson Testimony) There was continuing work available to claimant at O'Reilly's Automotive, Inc. (Hummel Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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."

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 voluntarily quit her employment with O'Reilly Automotive Inc. by offering a verbal resignation and leaving the place of employment before the end of her shift, which is both evidence of her intention to terminate her employment and an overt act of carrying out her intention.

Iowa Admin. Code r. 871-24.25(13) 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 section 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 section 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant has the burden of proving that a voluntary quit pursuant to Iowa Code § 96.5, subsection 1, was for good cause attributable to the employer. Iowa Code § 96.6(2). Where a claimant gives several different reasons for leaving employment, the administrative law judge is required to consider all stated reasons which might have combined to give the claimant good cause to quit in determining whether any of those reasons constituted good cause attributable to the employer. *Taylor v. IDJS*, 362 N.W.2d 534 (Iowa 1985).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Florida App. 1973). Each case must turn on its own facts. *Wolfe v. IUCC*, 232 Iowa 1254, 7 N.W.2d 799 (1943). Good cause need not be based on fault or wrongdoing on the part of the employer, but may be attributable to the employment itself. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956).

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.*

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 the Employer's version of events to be more credible than the Claimant's recollection of those events. Claimant alleges that on her second day of employment she realized that she would be required to perform tasks that were not included in the Delivery Specialist job description. (Claimant Testimony) Claimant admits that she does not know anything about auto parts and would not be able to answer the phone or assist customers in the store. (Claimant Testimony) However, claimant requested an increase in pay to perform these tasks. (Claimant Testimony) When claimant's request was denied, she asked both the store manager and district manager if she would be eligible for unemployment benefits and then walked off the job. (Claimant Testimony)

The claimant offered various reasons for ending her employment; and this administrative law judge has considered them all. Claimant's purported reasons for leaving her employment are not credible. Even if the claimant's testimony was credible, the added duties of answering telephones, assisting customers, putting away inventory and completing training quizzes are not a substantial change in the contract of hire. Claimant voluntarily quit her employment without good cause attributable to the employer. Benefits are denied.

DECISION:

The August 23, 2018, (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times her weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
Fax: 515-478-3528

Decision Dated and Mailed

acw/rvs