IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

SANTA M HUERTA Claimant **MARSHALLTOWN COMPANY** Employer	**APPEAL 15A-UI-13516-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/01/15** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 25, 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 December 30, 2015. The claimant participated personally with interpreter Vanessa Garcia. The employer participated through Anne Laubenthal, Human Resources Director. Claimant's Exhibit One 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 finishing operator and was separated from employment on August 6, 2015. Continuing work was available.

The claimant last performed work on April 17, 2015; before beginning an FMLA approved absence. The claimant did not have any contact with the employer directly while on her leave of absence but instead through her husband, who updated the employer with doctor's notes. The claimant provided the employer a doctor's note releasing her from care and a return to work date of July 9, 2015. The employer expected the claimant to return to work on July 9, 2015 for the second shift. The claimant did not return to work on July 9, 2015 and did not call the employer attendance line. The claimant had no contact with the employer (by way of herself or husband) from July 9, 2015 until her husband left a message for the employer on August 4, 2015. When the employer responded to the call, the claimant was made aware that separation occurred as she was deemed to have quit her job due to abandonment after being a no-call/no-show beginning July 9, 2015 until August 6, 2015.

A week prior to the claimant beginning her leave of absence, she was made aware that she was being moved to the second shift from the first shift. The claimant had previously worked the second shift for seven years, was moved to the first shift, and then at the employer's request was moved back to the second shift in early April 2015. The claimant did not want to work the

second shift due to obligations related to her children but did not tell her employer that she had childcare or other issues that would prevent her from returning. Nor did the claimant request that the move to second shift be reconsidered once her leave of absence was completed.

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(17), (18), and (27) 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:
>
> (17) The claimant left because of lack of child care.
>
> (18) The claimant left because of a dislike of the shift worked.
>
> (27) The claimant left rather than perform the assigned work as instructed.

The claimant initiated the separation when she did not return to work after being released by her doctor to return to work on July 9, 2015. Therefore, the separation is a quit and not a discharge, for unemployment purposes. The next issue is whether the reason for quitting is "good cause" under Iowa law.

The claimant has the burden of proof to establish the quitting of employment was for good cause. "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). 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).

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 claimant has not met her burden of proof to establish the quitting was for good cause. In this case, the claimant previously assigned to work the second shift, and did so, without issue, before being moved to the first shift. The employer determined based on business needs to move the claimant back to second shift, and made her aware during the first week in April 2015. The claimant then went on an extended leave of absence, and did not return to work because of her family obligations, even though the claimant was released to return to work on July 9, 2015. The employer held the claimant's position open for almost a month, and during that time the claimant did not make efforts to update the employer or alternately, return to work.

It is understandable that the claimant may not have wanted to return to the second shift or may have had childcare issues related to working that shift. However, the claimant was aware she could be moved from shift to shift and had previously worked the second shift without issues. Further, she did not make any attempts to discuss her concerns with the employer about being moved to the second shift; rather she simply did not return to employment after her leave of absence ended. Without being made aware of the claimant's concerns, the employer had no opportunity to address them and help the claimant preserve 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 November 25, 2015 (reference 01) unemployment insurance decision is affirmed. The 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.

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Jennifer L. Coe
Administrative Law Judge

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Decision Dated and Mailed

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