

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAVONNE L HENDERSON
Claimant

G & G LIVING CENTERS INC
Employer

APPEAL 16A-UI-07260-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/29/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(6)b – Work-Related Illness or Injury; Accommodation

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 21, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit working because she disliked working nights. The parties were properly notified of the hearing. A telephone hearing was held on July 28, 2016. The claimant, Lavonne Henderson, participated, and witnesses Dr. Kris Bockenstedt and Tony Jenison testified on claimant's behalf. Alan Heaven, attorney at law, represented claimant for the hearing. The employer, G & G Living Centers, Inc., participated through Allison Mitchell, QIDP; Jaime Ambrose, human resources coordinator; and Lorrie Meier, chief executive officer.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed, most recently full time as a living support staff from April 16, 2012, until this employment ended on March 12, 2016, when she resigned and ended her employment.

Claimant had an accident at work in May 2014, and she has suffered health problems ever since. In late 2014, claimant was diagnosed with anxiety, and she also had stomach problems. Claimant's doctor advised her to resign because her sleep patterns were being adversely affected by her employment. In November 2015, claimant spoke to the employer and asked for a "flex" position, which would have enabled her to work daytime hours. The employer did not give her this position at this time. Claimant testified she did not tell the employer at that time that she would need to quit her employment if she did not get the "flex" position.

On February 19, claimant gave about three weeks' notice via telephone to Allison Mitchell, her supervisor. Mitchell testified that claimant told her she could no longer work third-shift, and she planned to sell insurance after quitting her position with the employer. Claimant did not raise any health concerns in her conversation with Mitchell. After her conversation with Mitchell,

claimant met with Meier and Ambrose to discuss her resignation and available positions on other shifts. Meier and Ambrose testified that claimant stated she wanted to stay in Home 1, where she currently worked as a third-shift employee, because she already knew the individuals in that home. Claimant denies this, and she contends that Meier and Ambrose told her she was not qualified for the flex position. It is unclear from the testimony whether claimant reported that her doctor advised her to quit before she resigned or after she resigned.

The employer had first-shift and second-shift positions open in the other five homes, and claimant was qualified to work in those open positions. Ambrose testified she and Meier got out a sheet listing the open positions and reviewed these positions with claimant, which claimant rejected. Claimant denies she was offered any open positions. The employer did not have any open position for first-shift or second-shift in Home 1. The employer testified that they constantly have a staffing shortage. Currently, the employer has sixteen or seventeen open positions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was without good cause attributable to the employer. Benefits are withheld.

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. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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 employer's witnesses more credible than claimant. The administrative law judge found Ambrose and Meier both recalled specific details about their conversations with claimant and credibly testified regarding their conversation with claimant on February 19, 2016. The administrative law judge also considered the testimony that the employer has a perpetual staffing shortage and found that this statement supports the employer witnesses' description of the conversation with claimant. The administrative law judge does not believe claimant's testimony that no one offered her first-shift positions, and the administrative law judge does not believe the employer told claimant she was not qualified for the "flex" position. Numerous credible witnesses contradict claimant's version of the conversation, and it would be against the employer's own interest not to offer claimant, a longtime employee, continued work.

Here, the credible evidence shows claimant had a work-related injury that led into an issue with anxiety and sleeping. Claimant provided credible testimony through her doctor that she needed daytime work. Assuming claimant informed the employer that her sleeping issues and anxiety were work-related health problems, the employer fulfilled its obligation by offering claimant daytime work in multiple other homes. Claimant's decision to reject this solution to her problem, whether due to a desire to remain in Home 1 or another personal reason, is not a good-cause reason to leave her employment that can be attributed to her former employer. Benefits are withheld.

DECISION:

The June 21, 2016, (reference 02) unemployment insurance decision is affirmed. 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.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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