

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUE A ALBER
Claimant

BIERSCH INC
Employer

APPEAL NO. 18A-UI-06961-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/03/18
Claimant: Appellant (2)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 22, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 27, 2018. Claimant participated. Employer participated by Heidi Bergfeld and Drew McConnell.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 6, 2018. Employer accepted claimant's alleged offer of quit on June 6, 2018.

Claimant worked as a painter for employer. Claimant was asked to move from second shift to first shift, and on April 23, 2018 claimant began working first shift hours. Almost immediately claimant was harassed by her coworkers on first shift. She was harassed about her pace of work, her inability to lift objects heavier than required in her job description, and her unwillingness to immediately join the union. Claimant went to her manager and to human resources to complain about her treatment from coworkers. Claimant detailed the discussions and was able to state with particularity the persons to whom she spoke and the dates of conversations.

Nothing came of claimant's complaints, and she continued to endure the harassment throughout her employment. Employer stated that they had no record of the complaints, and the people to whom claimant repeatedly spoke about her issues no longer work for the company.

On June 6, 2018 claimant was again arguing with her coworker about a division of labor. The coworker went to claimant's supervisor to complain about what claimant would and would not do for the preparation work prior to painting. Claimant felt that she was just trying to get along with her coworker in agreeing to do what she'd normally done, and was exasperated when her

supervisor came to her with her coworker's complaint. Claimant stated that she told her supervisor, "I think that they want me to quit." When her supervisor walked away, claimant went back to doing her job for the next four hours.

Four hours after the interaction with the supervisor, claimant was called into a meeting area to talk with her supervisor, executive assistant, a very new human resources officer, and a representative of the union. At the meeting, it was stated to claimant that she was reported to have offered her resignation. Claimant responded that she didn't mean it if she had offered her resignation. After repeated questions by employer, claimant stated that she had offered the resignation because of her frustration.

Employer stated that this statement, made to a supervisor rather than a normal statement of frustration made to a coworker would be accepted and claimant's resignation would be immediate. Claimant was then walked out of the building

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because ongoing harassment by claimant's coworkers that was not addressed by management even though claimant repeatedly went to her manager and to human resources with complaints. In the alternative, claimant was seen to have withdrawn her resignation through her ongoing work for four hours after offering a thought that she trying to be pushed into quitting by her coworkers and supervisor.

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. IA Dept. 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 test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* Here we have specific dates provided by claimant of when she went to human resources and her supervisor with complaints with no resultant actions on the part of the employer. Rather, claimant's supervisor put the struggles on claimant instead of focusing on the bullying claimant was forced to endure. This does constitute good cause for a voluntary quit, if claimant's actions were interpreted as a quit.

It could also be argued that claimant neither intended to quit with her statement, nor had a valid offer to quit prior to employer's acceptance of said quit offer. Claimant spoke of others trying to force her to quit prior to 6:00 a.m. on June 6. Claimant's actions over the next four hours do not indicate any intention to quit as she immediately went back to work. When confronted by upper management, claimant's response was immediately that she didn't mean to say that she wanted to quit. At this point employer knew unequivocally that claimant had no intention to quit. Yet

employer, through its questioning of claimant, got claimant to admit she'd offered a quit four hours earlier. Employer then stated it accepted claimant's quit.

At the time of employer acceptance of quit, the quit was not on the table. Employer heard claimant state that she didn't mean to offer to quit if she had in fact done so. The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)). There was no testimony here that at the time employer accepted the "quit" that said offer was still on the table or that claimant no longer desired to retain her employment. As such, there was not a voluntary quit, and claimant is eligible to receive benefits.

DECISION:

The decision of the representative dated June 22, 2018, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs