

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAGAN C HOWARD
Claimant

TRI-MED HEALTH & WELLNESS CENTER
Employer

APPEAL 17A-UI-07105-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/11/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 10, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment by refusing to continue working. The parties were properly notified of the hearing. A telephone hearing was held on August 29, 2017. The claimant, Ragan C. Howard, participated. The employer, Tri-Med Health & Wellness Center, participated through Dr. Mitch Mally; Pamela Cook; Missy Gottfried; and Shelby Sandobal; and Breanne Schadt, Attorney at Law, represented the employer. Claimant's Exhibits A, B, C, E, F, H, and I and Employer's Exhibits 1 through 12 were received and admitted into the record.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a massage therapist, from July 2013 until June 7, 2017, when she quit her employment.

On May 31, 2017, claimant had an altercation with Dr. Mally. The employer was working to hire a new massage therapist, and claimant needed to schedule a massage with the candidate the employer hoped to hire. Dr. Mally approached claimant to ask whether she had contacted this candidate, and claimant responded with an abrupt and ill-tempered, "I said I would call her. I have her number." Dr. Mally was taken aback by claimant's tone, as this was not a tone in which claimant or any other employee spoke to him. Dr. Mally raised his voice and told claimant not to talk to him like that again.

One week later, on June 7, Cook requested to meet with claimant to discuss the incident that happened with Dr. Mally. Cook had prepared a disciplinary action to give to claimant, but

claimant did not sign the document. The conversation grew heated, and both women were raising their voices. Claimant told Cook that the meeting was just like a meeting they had one year prior, during which claimant was badgered and belittled. Claimant then told Cook that no one liked her and said, "Everybody hates your guts." Cook also attempted to discuss a concern with claimant's work performance. Around 6:30 p.m., claimant stood up and said they were done, as she had to go pick up her son. She told Cook that she would be taking the next day off to process "all of this," and she called Cook unprofessional. (Exhibit 3) Claimant also told Cook she wanted to have another meeting to continue the discussion. Claimant then went to Dr. Mally's office. She stood in the doorway and informed him she would not be at work the following day because Cook was unprofessional and claimant needed time to process. Claimant collected her belongings and she left the building. Claimant agrees that she was not told she was discharged, and she was not told that if she did not quit she would be fired.

Claimant did not report to work the following day. At 11:10 a.m., she sent Dr. Mally a text message reiterating her complaints about Cook. She described Cook as "unprofessional" and "impossible to talk to or deal with." (Exhibit I) She also stated that she was upset that Dr. Mally heard the dispute and did not intervene. Dr. Mally did not respond to this text message. He believed that claimant would be at work the following day and hoped to discuss the issues at that time. Claimant did not report to work the following day, and she did not call in to report that she would be absent. Claimant heard from coworkers that a uniformed officer was present at the office on Friday, June 9, and assumed this officer was there to walk her out if she showed up to work. Claimant did not report to work the following week, and she did not call in to report that she would be absent. That same week, she filed her claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but quit her employment without good cause attributable to the employer.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2)

(amended 1998). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In *Peck*, the employer called claimant Dale Peck back on the same day that he walked out and requested a meeting. During this call, the employer informed Peck that he had left work without permission and was considered to have quit voluntarily. *Id.* at 439. Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

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.*

The administrative law judge finds some truth in each party's testimony, and she also has concerns about both the claimant's and employer's versions of events. The administrative law judge found Gottfried credible, and she found the witness statements provided by claimant to be of little evidentiary value. Dr. Mally's response to the question of whether he ever heard Cook yell was unconvincing. The administrative law judge believes claimant's testimony that Cook yelled or lost her temper at work. Claimant's description of the May 31 and June 7 incidents were not believable. She provided conflicting statements regarding the contents of those conversations. The administrative law judge does not believe that claimant thought she was fired, and further does not think that claimant hearing gossip from coworkers that a uniformed officer is at the workplace and relying on that as a basis for believing she is fired is reasonable. 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 that claimant, not the employer, ended the employment relationship.

Iowa Admin. Code r. 871-24.25 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: ...

(22) The claimant left because of a personality conflict with the supervisor.

...

(28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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 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).

Here, claimant left work after complaining about Cook's unprofessional behavior immediately following a meeting with her. While claimant initially expressed that she wanted another meeting with management, she never returned to work so this meeting could occur. In her text message to Dr. Mally the day following the altercation with Cook, she did not reiterate her request for the meeting or ask to schedule a conversation with him. Instead, she repeated her complaints about Cook and voiced some concerns about his behavior as well. Claimant disliked Cook and had a strained working relationship with her. However, she did not describe any behavior from Cook that was hostile, abusive, or so intolerable that it compelled claimant immediately ending her employment. The average employee in claimant's situation would not have felt similarly forced to quit after the June 7 meeting. Claimant's actions demonstrate an abandonment of her job. Her decision to end her employment was without good cause attributable to the employer. Benefits are withheld.

DECISION:

The July 10, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was not discharged but quit her 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 A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn