

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ROCKY APFEL**  
Claimant

**MODERN BUILDERS INC**  
Employer

**APPEAL 18A-UI-00155-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/10/17  
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Rocky Apfel (claimant) filed an appeal from the December 29, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Modern Builders, Inc. (employer) for personal reasons which is not a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on January 26, 2018. The claimant participated. The employer participated through Vice President Rusty Stensland and Superintendent Ronn Muehling. The Employer's Exhibit 1 was received without objection.

**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 Laborer beginning on February 29, 2008, and was separated from employment on December 12, 2017, when he quit.

The claimant worked with his supervisor Mitch Moyer on building some door headers for a job site. Moyer's father was ill and he was not at work on December 5, 2017. Superintendent Ronn Muehling was on-site that day and was assisting with the installation of the headers. The headers had not been constructed properly and did not fit. Muehling asked the employees in the room, the claimant included, if they were "dumb motherfuckers" who could not measure. The claimant finished out his workday and went to the office to speak with Vice President Rusty Stensland. The claimant requested three days off work to deal with an ill relative. Stensland granted his request.

The claimant returned to work the following Monday. Muehling's son told the claimant that he was likely going to apologize for his outburst. Muehling did not apologize by the end of business on Tuesday, December 12, 2017. On the morning of December 13, 2017, the claimant called Stensland and told him that he was quitting due to the incident with Muehling the

previous week. If Muehling had apologized to the claimant, he would not have quit his employment.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

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:

...

(21) The claimant left because of dissatisfaction with the work environment.

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

Iowa Admin. Code r. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The 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).

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 findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The claimant's decision to quit because he did not agree with Muehling's outburst and lack of apology afterward does not constitute good cause attributable to the employer. The claimant continued working after Muehling's profane outburst. He was more bothered that Muehling did not apologize after the fact. The claimant testified had Muehling apologized for the outburst he would have continued working. The claimant's reason for leaving was due to a personality conflict with a supervisor and not a detrimental or intolerable work environment. The claimant's decision to leave was not for good cause attributable to the employer. Benefits are denied.

**DECISION:**

The December 29, 2017, 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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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