

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICKY D JOHNSON
Claimant

K R JONES ENTERPRISES INC
Employer

APPEAL 19A-UI-09517-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/03/19
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On December 2, 2019, Ricky D. Johnson (claimant) filed an appeal from the November 22, 2019, reference 02, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with K R Jones Enterprises, Inc. (employer) due to the terms of employment which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on December 30, 2019. The claimant participated personally. The employer participated through Steve Clair, General Manager. No exhibits were offered into the record.

ISSUE:

Did the claimant voluntarily quit 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 with the employer beginning on November 1, 2018, when the employer acquired the business where the claimant had worked since 2006. The claimant was promoted to Store Manager on March 13, 2019 and became a salaried employee. He was separated from employment on August 23, 2019, when he quit.

The claimant had accepted the job of Store Manager after the prior Store Manager quit. He knew the rate of pay when he accepted the position. On or about August 8, the claimant spoke with John Signs, Area Supervisor, about a raise he felt he deserved. At some point, Signs spoke with Steve Clair, General Manager, about the claimant's request. Clair investigated the claimant's pay and discovered that he was earning more than what he was seeking once bonuses were added to his base salary.

The claimant had carpal tunnel surgery on August 20 and his doctor released him to work with lifting restrictions. The claimant did not provide a copy of his restrictions to the employer. The claimant reported to work on August 21 and 22. He worked even though his wrist was swollen and causing him pain. The claimant did not go to his doctor to seek additional medical attention or request the doctor restrict him from all work. The claimant's doctor never told him that he needed to leave his employment.

On August 23, Signs and the claimant met to discuss the requested pay increase. Signs shared the information he had obtained from Clair and told the claimant that he would not be receiving a raise at that time. The claimant then told Signs that he was turning in his two-week notice unless he got a raise. The claimant left work before the end of his shift and placed his keys to the store, which were always in his possession, on the desk. The employer accepted that as the claimant's resignation effective immediately.

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)d 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. But the individual shall not be disqualified if the department finds that:

...

d. The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury, or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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:

...

(6) The claimant left as a result of an inability to work with other employees.

...

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

...

(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(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.

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). Where a claimant gives numerous reasons for leaving employment, all stated reasons which might combine to give the claimant good cause to quit are required to be considered. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985). 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).

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 was evasive when answering some of the questions and required questions to be asked multiple times.

The claimant cannot establish that he voluntarily quit with good cause attributable to the employer due to injury. Accepting the claimant's injury was because of or aggravated by work solely for the purpose of determining eligibility for unemployment insurance benefits, he has not provided competent evidence to show adequate health reasons justifying his separation from employment. The claimant's doctor released him to work and his doctor did not tell him he needed to quit his job. The claimant also never informed the employer that if they did not accommodate his wrist he was going to quit.

The claimant's decision to voluntarily quit due to his rate of pay when he knew the rate of pay when he was promoted into the position does not constitute good cause attributable to the employer. The claimant told his supervisor on the morning of August 23 that he was going to quit and left his keys on the desk that day. The claimant expressed an intention to quit and engaged in an overt act to carry through with that intention. The final incident that occurred prompting the claimant's actions was the employer's denial of his request for a raise. Benefits are denied.

DECISION:

The November 22, 2019, reference 02, unemployment insurance decision is affirmed. The claimant voluntarily left 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.



Stephanie R. Callahan
Administrative Law Judge

December 31, 2019
Decision Dated and Mailed

src/scn