

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VERNON R THOMPSON
Claimant

REM IOWA COMMUNITY SERVICES INC
Employer

APPEAL 20A-UI-00079-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/01/19
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the December 23, 2019, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 24, 2020. The claimant participated personally. The employer participated through Jackie Boudreaux, hearing representative for ADP. Kerri Weaver, program director. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer provides 24 hour care for individuals with developmental disabilities. The claimant was employed full-time beginning in 2009 as a direct support professional and was separated from employment on June 12, 2019. He last physically worked on May 17, 2019. Continuing work was available.

During the claimant's time with the employer, he worked in the same facility, which included a particular individual. In recent months before separation, the individual had become increasingly violent with staff when demanding cigarettes. His cigarettes were rationed based upon how many he could afford, and he was allowed one cigarette approximately every two hours. When the individual would request more than the allotted cigarettes, and was denied, he would threaten to punch or kill staff members. There had been actual incidents of him punching

a staff member in the face, spraying chemical cleaner at staff and pulling knives on them. The employer was aware of the client's increasingly violent tendencies and alerted his doctor.

In the past, the claimant's supervisor had a good relationship with the individual and when he would become upset, the claimant had been encouraged to call the supervisor, who would calm the individual down. The supervisor left in February 2019 and the individual began having more frequent violent tendencies after his facility merged with another in April 2019. After the claimant's supervisor had left, his new supervisor told him not to be calling when the individual had outbursts. The claimant had also been previously directed not to call 911 on the individual by his supervisor.

The claimant met with Ms. Weaver on May 17, 2019, stating it was too stressful to continue working, as the outbursts were happening every shift, and the claimant was tired of being threatened to be killed by the client, the client's dad, the client's brother, over cigarettes. Ms. Weaver advised the claimant to take some vacation and stated there may be a transfer opportunity at another facility. The claimant took his vacation and learned there was no transfer facility. While the claimant had been on vacation, Ms. Weaver informed employees that moving forward, they could call 911 if the client threatened violence. The claimant determined he could not return to the facility with the client and tendered his resignation.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,429.00, since filing a claim with an effective date of December 20, 2019. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Kerri Weaver testified.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was with good cause attributable to the employer.

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 claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

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. Iowa Dep't 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 element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

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 weight of the evidence in the record establishes claimant has met his burden of proof to establish he quit for good cause reasons within Iowa law.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. 871 IAC 24.26(4). While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

Good cause need not be based on fault or wrongdoing on the part of the employer, but may be attributable to the employment itself. *Raffety v. IESC*, 76 N.W.2d 787 (Iowa 1956). In this case, the claimant and other staff made the employer aware of a scared individual who was repeatedly making threats of violence to staff members, on a daily basis. These were not veiled threats of violence either; on multiple occasions, the client actually followed through with punching a staff member, spraying chemicals on them or pulling a knife on a staff member. Even when the frequency of threats continued, the employer did not make any other changes, except telling staff after the claimant's last day that they were permitted to call 911 on the client.

An employer has a duty to provide a safe workplace for its employees. An employee also has the right to expect that management when notified about such conduct will take reasonable steps to end the threats of violence. The conduct the claimant was subjected to was severe and recurring, and it cannot be ignored that the claimant was a long term employee. This is not a case of one time incident or possibly hypersensitive employee. Under the facts of this case, a reasonable person would conclude that repeated threats of violence known to the employer created an intolerable and unsafe work environment for the claimant, that gave rise to a good cause reason for leaving the employment. Benefits are allowed, provided he is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

DECISION:

The unemployment insurance decision dated December 23, 2019, (reference 02) is affirmed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Beckman
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Decision Dated and Mailed

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