

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JERRY NIMRICK**  
Claimant

**GREYSTONE MANUFACTURING LLC**  
Employer

**APPEAL 18A-UI-08359-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/15/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 3, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant quit because he disliked the work environment. The parties were properly notified of the hearing. A telephonic hearing was held on August 28, 2018. The claimant, Jerry Nimrick, participated along with witness Matt Pojar, the employer's Safety Director. The employer, Greystone Manufacturing, L.L.C., participated through Sherry Ault, HR Manager.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**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 material handler, from September 6, 2016, until July 6, 2018, when he quit. Claimant had issues with the way that forklift drivers operated their forklifts at work. He felt they went too fast and were driving unsafely. On several occasions, claimant was nearly hit by a driver operating a forklift. Claimant reported these concerns to Pojar, the Safety Manager. When these concerns arose, Pojar went and counseled the drivers at issue. According to Pojar, each driver who operates a forklift for the employer has taken a class, passed a test, and obtained the proper certification. The employer also provides employees with high-visibility vests to wear while in the warehouse so accidents are avoided. The final incident leading to claimant quitting occurred on July 6, when a forklift missed hitting claimant by a few inches. After this happened, he texted the plant manager and quit his employment. Continued work was available, had claimant not quit his employment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant quit his employment without good cause attributable to the employer. Benefits are withheld.

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.

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: ...

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

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 employer presented more credible testimony than claimant.

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). Here, the average employee in claimant's situation would not have felt similarly compelled to quit his employment. The administrative law judge believes that claimant voiced safety concerns, but she also believes that the employer dealt with these concerns in an appropriate manner. 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). Claimant contacted the plant manager and notified him that he was quitting his employment. He had no additional contact with the employer after that, and he never returned to work. Claimant's separation from employment was without good cause attributable to the employer. Benefits are withheld.

**DECISION:**

The August 3, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant separated from 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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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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