

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**FREDY J MIRANDA**  
Claimant

**MIDWEST BASEMENT SYSTEMS INC**  
Employer

**APPEAL 16A-UI-13509-LJ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 11/20/16**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 16, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit his employment by refusing to continue working. The parties were properly notified of the hearing. A telephone hearing was held on Thursday, January 12, 2017. The claimant, Fredy J. Miranda, participated and was represented by Rob Poggenklass, attorney at law. The employer, Midwest Basement Systems, Inc., participated through Jonathan Bishop, financial controller and HR; and Josh Heady, production manager. Claimant's Exhibit A and Employer's Exhibits 1 through 5 were received and admitted into the record

**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 foreman, from March 7, 2016 until November 21, 2016, when he quit over deductions the employer was taking from his paycheck. When claimant became a foreman with the employer, Heady personally trained him on several critical items. Specifically, Heady testified he trained claimant on how to use the tablet, how to read and review contracts, and which contract to work from when completing a job. Heady told claimant he should always base his work off the signed contract affiliated with the project. Heady indicated that if a foreman were ever in a situation where he did not have a signed contract to work from, he should contact Heady directly. Heady emphasized that without a signed contract, the employer has no authorization to perform any work for a customer and therefore is subject to significant potential liability.

Claimant was assigned to complete the Weckman basement project. Claimant testified that he based his work off the contract with a price of \$7756.50. (Exhibit 4) After claimant completed the job, he spoke to the customer to report that the work was complete. At that point, the customer informed claimant that he made an error in completing the job. Specifically, claimant went too far into one of the basement's rooms by eleven feet. The customer reported this issue

to Heady, and Heady arranged for the pre-inspector to go out to the worksite and investigate the issue. When the pre-inspector returned, he reported that an error occurred, the floor was damaged, and the employer would need to replace the customer's linoleum in that room. Heady also spoke to claimant around this time and said he would not judge or assess blame until he had all the information about what happened. Ultimately, Heady concluded that claimant worked from the incorrect contract, and therefore the error in the Weckman basement project job was his fault. The employer provided a copy of the signed contract that claimant should have relied on in completing the Weckman basement project. (Exhibit 3) Heady testified this contract would have been on claimant's tablet at the time he went to the worksite to complete the job, but he may have needed to scroll all the way over to the right side of the screen to find it. Heady explained that no foreman would ever be sent out to complete a job without the employer first having a signed contract from the customer. Additionally, he stated that the employer does not have a method of deleting certain documents from a project on the tablet, so he is certain claimant's tablet would have contained the signed contract with the proper project specifications. Heady testified claimant had previously worked off of an incorrect version of a contract, and he was counseled on how to locate the final, signed contract on his tablet.

The employer provided a copy of its Foreman Bonus Program. (Exhibit 2) This policy explains that a foreman's bonus equals the net total of gains and losses on completed jobs, less any adjustments. The adjustments that may affect a foreman's bonus amount include the cost of workmanship errors and omissions attributable to the foreman or the crew. After the employer received information from the customer regarding the cost of replacing the linoleum, Heady informed Bishop of the cost and instructed him to begin deducting that amount from claimant's bonus. Claimant came to Heady on Friday, November 11, after the first \$100 deduction was made from his check. Heady explained that the deduction was taken to begin covering the cost of the replacement linoleum from the Weckman basement project. Claimant then went to Bishop to discuss the issue and Bishop explained the amount the full amount that would be deducted from claimant's bonus. The employer deducted \$300 from claimant's check the following week for the same issue. When claimant discovered this, he came to Heady and said he would quit and would not pay for this because it was not his fault. Claimant acknowledged that he knew about the Foreman Bonus Program and that money could be deducted from his bonus if he made errors. However, claimant denies responsibility for the error on the Weckman basement project. According to the employer, claimant had previously taken deductions from his bonus due to adjustments attributable to errors or omissions.

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

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

The outcome in this case rests in part on the credibility of the parties. 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 provided a more credible version of events than the claimant.

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. 871-24.26(1) 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:

**24.26(1)** A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Claimant contends he quit his employment due to a change in his contract for hire. However, this claim is without evidentiary support. While claimant may have decided to end his employment because the employer began deducting amounts from his bonus due to the Weckman basement project issue, claimant consented to this practice when he began his employment. Claimant acknowledged he was aware of the Foreman Bonus Program, and he was aware that such deductions could be made for the cost of workmanship errors and omissions attributable to him, as the foreman, or his crew. The Foreman Bonus Program was in place when claimant became a foreman and he agreed to its terms in accepting the foreman position.

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: ...

(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.

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, claimant ended his employment after the employer began deducting funds from his bonus to cover errors on the Weckman basement project, on which claimant was the foreman. The average employee in claimant's situation would not have felt similarly compelled to leave employment over this issue. 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 told Heady that he was quitting his employment and he never returned to work. Claimant's decision to quit because he disagreed with the deductions from his bonus is not a good cause reason attributable to the employer. Benefits are withheld.

**DECISION:**

The December 16, 2016, (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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