

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAMELA D KONCHALSKI
Claimant

**CENTRAL IOWA HOSPITAL
CORPORATION**
Employer

APPEAL 21A-UI-19359-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/13/21
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On August 30, 2021, the claimant, Pamela Kochalski, filed an appeal from the August 20, 2021, (reference 01) unemployment insurance decision that denied benefits based on a determination that the claimant voluntarily quit her employment. The parties were properly notified about the hearing. A telephone hearing was held on October 22, 2021. Claimant participated and testified. Employer registered a phone number for this hearing but the call was not answered and went to voicemail. The Administrative Law Judge left a message for the employer on the first call and attempted one more phone call before beginning the hearing. The employer did not call in during the hearing. The employer did not participate in the hearing. Official notice was taken of the administrative record.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in September of 2019. Claimant last worked as a full-time Registered Nurse at Lutheran Hospital Des Moines, Iowa. Claimant was separated from employment on June 17, 2021, when voluntarily quit her employment after giving her employer 5 weeks' notice. The claimant worked in the Cardiac Intensive Care Unit (CIC) at the hospital working 12-hour shifts from 7:00 a.m. to 7:00 p.m. The claimant began to experience issues at work when a new supervisor took over in November of 2020. The new supervisor informed the claimant that she wanted her to bolster some of her nursing skills unique to CIC. The claimant was able to complete some of those tasks but other opportunities were never provided even after numerous requests from the claimant. At one point the claimant and her manager were discussing a charting issue with a patient's account and while the claimant was holding onto a piece of paper the supervisor snatched it out of her hand causing the claimant to bleed. The supervisor offered no apology and the claimant reported this incident to human resources. Following this report the claimant felt that the her supervisor was intentionally singling her out for very minute issues that were not unique

to her and informing the claimant's co-workers about perceived shortcomings in the claimant's work. The CIC had a policy that if you were called in to cover a shift and after arrival on the unit a determination was made that the coverage wasn't necessary the employee that volunteered their time would be paid for 2 hours of work. The claimant was sent home several times after she voluntarily agreed to cover a shift and did not receive this benefit. The claimant was also called in and subsequently sent home on various holidays including Christmas Eve. The claimant would begin each shift wondering what fault her supervisor would point out or what information her supervisor relayed to her co-workers about her performance. The employer assigned an additional supervisor to assist the claimant's direct supervisor but this did nothing to alleviate the negative behaviors of the claimant's direct supervisor. The claimant gave her employer 5 weeks' notice and it wasn't until the claimant's last day that her supervisor's boss requested feedback or inquired if there was anything that could be done to retain the claimant as an employee. The claimant had no disciplinary history during her tenure and received pay increases throughout her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

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(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.

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). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

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.* Where multiple reasons for the quit, which are attributable to the employment, are presented the agency must "consider that all the reasons combined may constitute good cause for an employee to quit, if the reasons are attributable to the employer". *McCunn v. EAB*, 451 N.W.2d 510 (Iowa App. 1989)(citing *Taylor v. Iowa Department of Job Service*, 362 N.W.2d 534 (Iowa 1985)).

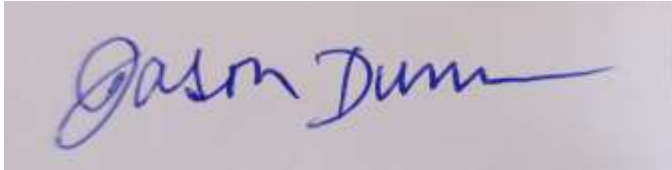
When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

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 employer's failure to participate in this hearing weighs heavily in the claimant's favor. The claimant's testimony was clear, direct, and credible. The claimant was targeted by her supervisor in subtle but intentional ways. Discussing the claimant's perceived shortcomings with other employees, directing the claimant to build up certain skills but then not providing the opportunity to follow through with that directive, and by needlessly calling the claimant into work and then sending her home are examples of the supervisor's frequent persecution of the claimant. The employer failed to offer any evidence to challenge these allegations and the claimant's demeanor and candor during the hearing supports the determination that she voluntarily quit her employment with good cause attributable to her employer. Benefits are allowed provided she is otherwise eligible.

DECISION:

The August 20, 2021, (reference 01) unemployment insurance decision is reversed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Jason Dunn
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November 08, 2021
Decision Dated and Mailed

jd/OL