

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ESTHER GRANADO
Claimant

TEMP ASSOCIATES-IOWA INC
Employer

APPEAL 19A-UI-10128-AW
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/01/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 18, 2019 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A hearing was held in Burlington, Iowa on February 20, 2020 at 1:00 p.m. Claimant participated. Spanish interpretation was provided by Carlos (ID number 9914) from CTS Language Link. Employer participated through Brian Krieger, Branch Manager. Claimant's Exhibit A was admitted. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without 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 by Temp Associates-Iowa, Inc., a temporary employment firm. (Claimant Testimony) Claimant's most recent assignment was an assembler with Winegard in Burlington, Iowa. (Krieger Testimony)

On October 23, 2019, claimant sustained a work-related injury to her left hand from using a drill. (Claimant Testimony) On October 24, 2019, claimant received treatment from a physician, who provided claimant with work restrictions for her left hand. (Claimant Testimony; Exhibit A) On October 24, 2019, claimant returned to work. (Claimant Testimony) Winegard accommodated claimant's restrictions. (Krieger Testimony)

On October 31, 2019, claimant told employer that she did not like the way Winegard reassigned her after her injury. (Krieger Testimony) Claimant reported to employer that she did not feel like her work was being valued and did not want to return to the assignment at Winegard. (Krieger Testimony) Claimant voluntarily quit her assignment at Winegard. Claimant asked for another assignment during the meeting with employer on October 31, 2019. (Krieger Testimony) Employer had no other assignments available. (Krieger Testimony) There was continuing work

available with Winegard if claimant had not quit. (Krieger Testimony) Claimant's placement at Winegard was not in jeopardy. (Krieger Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit her employment without good cause. Benefits are denied.

As a preliminary matter, claimant does not meet the temporary employee exception for disqualification under Iowa Code section 96.5(1)(j), because claimant did not complete her assignment at Winegard.

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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 claim gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.25(21) 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.

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.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony to be more credible than the claimant's testimony, which was internally inconsistent. Specifically, claimant produced the patient status report from her physician's visit on October 24, 2019, but not the one from November 6, 2019. Claimant testified that she gave

employer a copy of the November 6, 2019 patient status report, but later testified that she had never seen the November 6, 2019 patient status report until it was proposed as an exhibit by employer at the hearing. Claimant also testified that she had not been released to return to work without restrictions, which is contradicted by the November 6, 2019 patient status report. (Exhibit 1)

Claimant voluntarily quit her assignment at Winegard as evidenced by her verbal resignation to employer. Claimant's dissatisfaction with the work environment does not constitute good cause for quitting. Furthermore, claimant was not compelled to quit her assignment at Winegard due to her work-related injury. Claimant's physician did not restrict claimant from returning to work; and Winegard was accommodating claimant's work restrictions. Claimant's assignment at Winegard did not pose a serious danger to her health. Therefore, claimant's work-related injury does not constitute good cause for quitting. Claimant has not met her burden of proving she voluntarily quit for good cause attributable to employer. Benefits are denied.

DECISION:

The December 18, 2019 (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

acw/scn