IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

JAMES R GEORGE Claimant **THE HON COMPANY** Employer	**APPEAL 18A-UI-05809-DG-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/22/18** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 9, 2018, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 12, 2018. Claimant participated. Employer participated by Lucas Knox, MCR Generalist and was represented by John O'Fallon, Hearing Representative. Employer's Exhibits 1-2 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 18, 2018. Claimant left work on that date and he did not return.

Claimant began working for employer September 10, 2012, as a finish painter. Claimant was displeased with employer's decision not to promote him after a manager had told him he would be promoted because of his work product, and his overall performance sometime in early 2018.

On April 18, 2018, claimant's team leader, Josh Howell was giving claimant advice about his painting work. During that conversation, claimant did not agree with some of the comments Mr. Howell was making. Claimant voiced his concerns, and the conversation became heated as claimant explained his position to Mr. Howell. Mr. Howell told claimant that if he did not like what he was told he should get up and walk out the door.

Claimant took Mr. Howell's comments personally and believed he was being told that he should quit. Employer never told claimant he was fired, and it had continued work available to claimant. Claimant did leave the area in the middle of his shift on April 18, 2018 and he did not return to work after that date. Claimant believed his employment had been terminated by the employer.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he mistakenly believed he had been discharged.

Iowa Code section 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(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. 871-24.25(22) 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:
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> **(22)** The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(28) 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:
>
> **(28)** The claimant left after being reprimanded.

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*.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Individuals who leave their employment due to disparate treatment are considered to have left work due to intolerable or detrimental working conditions and their leaving is deemed to be for good cause attributable to the employer. The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Dep't of Job Serv.*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Emp't Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.,* (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). Since claimant did not follow up with management personnel or the owner, and his assumption of having been fired was erroneous, his failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The decision of the representative dated May 9, 2018, (reference 01) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Duane L. Golden
Administrative Law Judge

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Decision Dated and Mailed

dlg/scn