

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JUANITA ELLIS
Claimant

PATHWAY LIVING CENTER INC
Employer

APPEAL 17R-UI-11276-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/20/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

An appeal was filed from an unemployment insurance decision dated September 8, 2017, (reference 01) that denied benefits. A first hearing was scheduled between the parties on October 3, 2017. The claimant/appellant failed to appear at the hearing, and the appeal was dismissed. (See 17A-UI-09481-DB-T). Upon a remand decision from the Employment Appeal Board, the appellant's request to reopen the hearing was granted. (See 17B-UI-0481). After due notice, a second hearing was scheduled and conducted by telephone on November 27, 2017. The employer was represented by Melissa Peterson, executive director. Jessica Slocum and Kristina Rebelsky testified for the employer. The claimant participated personally. Angie Bloomfield, goal coordinator, and Cherish Ernst, consumer services associate director, testified. The claimant intended to call several witnesses but they were not available when called for the hearing, including Larissa Brewer, Jamie Harmon, and Crysynthia Drake.

Claimant Exhibit A (Claimant's appeal letter) was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a goal coordinator. The claimant's job duties included providing care to individuals afflicted with mental illness, and often required her to visit the clients in their personal homes. The undisputed evidence is the job could be very emotionally challenging. She separated from employment on August 22, 2017, when she quit the employment. Continuing work was available.

The claimant had a difficult year in her personal life, while employed for this employer, which included the deaths of multiple family members, her sister being diagnosed with cancer, her daughter being diagnosed with post-partum depression, and providing care for a granddaughter.

Prior to tendering her resignation, the employer had accommodated requests for time off through long weekends for the claimant, including August 11 through 14, and August 19-21 to allow for her to tend to her granddaughter and family needs. In addition, the claimant requested a one month leave of absence around August 15, 2017, for personal family reasons. The request was denied by the employer due to business needs. The claimant was upset by the employer's refusal to allow her one month off of work. She told Melissa Peterson when she quit that it was due to her granddaughter.

The claimant asserted that she did not quit due to her family needs but rather due to the work environment, stating she "just couldn't deal with it anymore". The claimant stated she quit due to stress because her doctor told her that "stress will kill you". There was no medical documentation provided to the employer or for the hearing that supported the claimant's resignation was due to a doctor's recommendations. The claimant had previously visited with a doctor, who had prescribed her medication and recommended mental health care, which she declined.

Specifically, the claimant cited to several incidents which reportedly upset her and caused her to quit. Sometime in spring 2017, the claimant reported that she was cursed out by a co-worker, Beth, and nothing was done about it when reported. The claimant also referenced an incident that occurred in April 2017, in which one of her clients blocked the door of his home to allow the claimant to leave while having an argument. Upon reporting this to the employer, he was removed from her caseload. The claimant also had a disagreement with Ms. Peterson regarding the handling of a client's feces covered bathroom. The claimant asserted she was being treated differently by Ms. Peterson than other goal coordinators, and that Ms. Peterson was trying to make her quit, which Ms. Peterson denied.

Then, tragedy struck, when two of the claimant's clients passed away in a two-week period in June 2017. The second client was discovered by the claimant and a co-worker, who were visiting him at his home. Upon seeing the client deceased through a window, the claimant was directed by the employer not to enter the premises until the hospice nurse was there. The undisputed evidence is the claimant was distraught upon entering the death scene, as were several of her co-workers who were on site, along with the hospice nurse. The evidence is disputed as to whether the claimant requested to stay on site or was asked to do so. Thereafter, the employer brought in grief counselors to address employees on both a group and individual level. The claimant continued working until she quit in August 2017.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5-1 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.

Iowa Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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:

(22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

Iowa Admin. Code r. 871-24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. 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. 871 IAC 24.25. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). 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.*

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. 871 IAC 24.26(4). While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

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 claimant 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 weight of the

evidence in the record establishes the claimant has not met her burden of proof to establish she quit for good cause reasons within Iowa law.

The undisputed evidence is the claimant had a difficult year both personally, and professionally, leading to her decision to resign. The administrative law judge is sympathetic to the stress at home the claimant experienced with deaths and illness in her immediate family, combined with a challenging job, which included the deaths of two clients in a very short timeframe. The credible evidence presented though does not support the claimant quit over the job conditions, or after the deaths of her clients; but rather, after the employer denied her request to take a one month leave to tend to her grandchild, for whom she was caring. The administrative law judge cannot ignore the timing of the request (approximately August 15, 2017) to the decision to quit, in comparison to the few incidents the claimant referenced about work conditions in early to mid-2017. The employer demonstrated a willingness to work with her to resolve the work issues, as evidenced by the offering of grief counseling and also schedule accommodations in August 2017, to allow the claimant to tend to her grandchild. Given the stale dates of the other complaints, they are not individually addressed as the claimant acquiesced to them by not raising concerns with her supervisor or quitting earlier when they arose.

Further, the credible evidence presented does not support that a claimant's treating physician directed the claimant to quit her employment for health reasons. The claimant stated her reason for leaving was the fact that she was experiencing stress. However, she was not advised by a doctor to leave the employment. It appears that her stress was due to both work issues as well as personal issues. The claimant reported when she saw a doctor, she was prescribed medication, she declined it.

Therefore, based on the evidence presented, the administrative law judge concludes the claimant's leaving the employment to care for her granddaughter may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The September 8, 2017, (reference 01) decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn