

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMY M YETMAR
Claimant

VAN DIEST SUPPLY CO
Employer

APPEAL 16A-UI-09206-DGT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/31/16
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 August 16, 2016, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 12, 2016. Claimant participated. Employer participated by Carolyn Cross, and was represented by Espnola F. Cartmill, Attorney at Law. Employer's Exhibits 1, 2, 3, 5, 6 and 7 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 August 1, 2016. Claimant left work on that date and did not return.

Claimant was injured at work and was on medical leave until July 20, 2016. Claimant returned to work without any restrictions on that date. Claimant tried to take it easy physically because she did not want to injure her back.

On about August 1, 2016 claimant was assigned to "batching". Claimant had been avoiding batching because it required lifting and moving heavy objects. When her supervisor asked claimant to start batching she stated that if she had to batch she would have to leave work. Supervisor confirmed that her work assignment for the day was batching. Claimant picked up her equipment and left the work area. Claimant did not return to work after that date, and was a no-call no-show for the rest of the week.

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 she did not want to perform the work task that was assigned to her.

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. 871-24.25(4), (22) and (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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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

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

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Since the employer does not have a policy as set out in Iowa Admin. Code r. 871-24.25(4), the separation was not due to failure to call or report for three days.

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.*

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).

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).

While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer. Since claimant did not follow up with management personnel or the owner, and her assumption of having been fired was erroneous, the failure to continue reporting to work was an abandonment of the job. Benefits are denied.

DECISION:

The decision of the representative dated August 16, 2016, (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.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs