

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RALPH D SHELDAHL
Claimant

APPEAL 17A-UI-11734-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/WOODWARD
Employer

**OC: 10/29/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 15, 2017, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on December 6, 2017. Claimant participated. Employer participated through assistant superintendant Diane Stout, treatment program administrator Jennifer Wyant, and human resource associate Amy Monaghan. Sam Krauss of Employers Edge represented the employer. The administrative law judge took official notice of the administrative record, including fact-finding documents. Claimant's Exhibits A - F were received.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the change to the employment terms the result of job misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time residential treatment worker beginning November 3, 2011, in Woodward, Iowa. He has a master's degree in psychology. After obtaining the Ames job on July 17, 2015, by a seniority bidding process, he moved from the Woodward area to Ames, where his immediate supervisor was Dave Wilcox. Amy Halls, LMFT, began providing counseling to claimant for depression and anxiety on August 25, 2016. Halls did not advise claimant to quit the employment. (Claimant's Exhibit A) Third-party administrator Reed Group certified intermittent Family and Medical Leave Act (FMLA) leave effective June 19, 2017. The employer has no knowledge of why the leave was granted and claimant did not make any medical accommodation requests. On October 23, 2017, the employer notified claimant he would be indefinitely moved from his work location in Ames back to Woodward, about 40 miles away. He put in a notice of resignation the same day to be effective on November 6, 2017. (Claimant's Exhibit F)

Wilcox's supervisor Wyant and her supervisor, Stout decided to move claimant back to work in Woodward for more intensive supervision after an investigation concluded on October 12, 2017, that claimant had allegedly made inappropriate comments towards a female coworker five months earlier. Another reason for the move was the result of an investigation that concluded on October 2, 2017, claimant had allegedly not properly documented member (resident) goals for the month of September, which could affect reimbursement. Stout had issued claimant a written warning on June 12, 2017, for documenting progress notes for an entire shift when he worked a partial shift. (Administrative record.) Another reason for the transfer was after claimant sought input of the Woodward campus psychologist who also works with member MP, but did not include supervisors. Claimant was concerned that claimant had gained over 50 pounds since Wilcox began as supervisor.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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. 871-24.26(1) 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:

24.26(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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

Because the parties agree the separation was voluntary and the change in work location was disciplinary, the question must be addressed as to whether the reasons for the change were related to job misconduct.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. *Discharge for misconduct.* If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) *Definition.*

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

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 decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. Noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports and did not present supporting documentation, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. Claimant adequately rebutted the allegations that caused the employer to decide to move him from the Ames work location to Woodward. His communication with MP's therapist was reasonable

given her significant weight gain since Wilcox became supervisor. Since there was no disqualifying basis for the demotion, the question is then whether the change in contract of hire was sufficient to establish a good-cause reason attributable to the employer for quitting. Claimant had moved his family from the Woodward area to Ames after having been awarded the job there in 2015. He had not commuted that distance while working for the employer and moving back to the Woodward area would have created disruption to his family and additional expense. While the employer is certainly entitled to make personnel decisions based upon its needs, and discipline may have been appropriate, that need does not necessarily relieve it from potential liability for unemployment insurance benefit payments. Inasmuch as the claimant would suffer a significant change in the terms of hire for the most recent position in Ames, and employer has not established misconduct as a reason for the effective demotion, the separation was with good cause attributable to the employer.

DECISION:

The November 15, 2017, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs