

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TERESA A MUSTARD
Claimant

CDS GLOBAL INC
Employer

APPEAL 15A-UI-13693-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/15
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 October 29, 2015 (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2016. The claimant participated personally. Prior to the hearing, the employer submitted written documentation indicating it would not be participating in the hearing or contesting benefits. Claimant's Exhibit A was admitted into evidence.

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 supervisor and was separated from employment on July 27, 2015; when she resigned.

On July 27, 2015, the claimant resigned without notice upon learning she would be demoted immediately. The claimant had been with the employer for approximately ten years and in the role of a supervisor for approximately three and one-half years. The claimant received raises with each performance review and had not been made aware her job as a supervisor was in jeopardy. The employer told the claimant she was being demoted to a customer service representative and would be on a team of individuals for which she had been the supervisor. The claimant's shifts would have changed but she could have remained at the same rate of pay. The employer reported that the claimant made an employee cry, when she was confronted by the claimant and told she needed to return to her desk. The claimant directed the employee to go to her desk because she was loitering and not answering phones. The claimant denied yelling or using any harsh tone.

The claimant had previously been issued a verbal warning for making another employee cry in the weeks prior to her resignation. At management's direction, the claimant was told she need to move teams around on the phones and when she informed an employee of the change, the employee started crying saying she didn't want to handle those calls. The claimant was also warned a year prior to separation for eating candy in an interview.

REASONING AND CONCLUSIONS OF LAW:

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

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. 871-24.26(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:

(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.

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 witness 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 employer has not met the burden of proof to establish that claimant acted deliberately or negligently in the performance of her job duties, or intentionally used a harsh tone, causing employees to cry. Thus, the employer has not established that the demotion was related to any incident of misconduct. Inasmuch as the claimant would suffer a significant reduction in job responsibilities (as she would become a member of the team she formerly supervised) and a significant change in hours, the change of the terms of hire associated with the demotion is considered substantial. Thus the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The October 29, 2015 (reference 01) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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