

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RASEC PILLOT

Claimant

VAN PELT PAINTING INC

Employer

APPEAL 17A-UI-08100-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/17

Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the August 8, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 28, 2017. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Matthew Van Pelt, president. 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.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

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 painter and was separated from employment on July 13, 2017, when he quit the employment without notice. Continuing work was available.

The employer acknowledged that working in the construction environment, cursing and salty language was tolerated. According to Mr. Van Pelt, the "F" work is a "go-to" word, and "nothing" in the context of the construction work environment. The claimant was warned two days prior by Mr. Van Pelt for standing around and not doing his work. On July 13, 2017, Mr. Van Pelt arrived to the job site, to see the claimant standing and talking to two employees, instead of performing work. Mr. Van Pelt yelled at the claimant and his co-worker, asking if they were participating in a "gang-bang" and said "What the fuck are you doing? Are you going to fucking work or not?" The claimant threw his hands up and said he didn't have to take it anymore and quit the employment.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,268.00, since filing a claim with an effective date of July 23, 2017. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Mr. Van Pelt was aware of the scheduled fact-finding interview, but was busy and did not recognize the phone number when called, and did not listen to the provided voicemail until hours later.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with 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. 871-24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

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. See 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). Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

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 employer 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 established the claimant has met his burden of proof to establish he quit for good cause reasons within Iowa law.

An employee has the right to work in an environment free from unwanted vulgar comments. No employee should have to endure intimidation, belittlement, embarrassment, yelling, or bullying behavior in order to retain employment or avoid disqualification from unemployment insurance benefits. Mr. Van Pelt admitted to yelling and using profanity at the claimant in response to discovering him at work talking to a co-worker instead of working. Recognizing that certain work environments are more tolerable of profanity usage, including this employer, the administrative law judge is persuaded that Mr. Van Pelt's yelling profanity at the claimant on July 13, 2017 and questioning if he was participating in a "gang-bang" goes beyond the scope of general cursing or banter. Even if the claimant was not performing his work as directed or was loafing on the job, Mr. Van Pelt could have been direct, or blunt, without using blatantly offensive and vulgar language. Mr. Van Pelt's conduct was sufficient to grant claimant a good-cause reason attributable to the employer for leaving his employment. Benefits are allowed.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

DECISION:

The August 8, 2017, (reference 01) decision is affirmed. The claimant quit for good cause reasons attributable to the employer. Benefits are allowed provided he is otherwise eligible for benefits. The claimant has not been overpaid benefits. The employer is not relieved of charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn