

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NANCY E DENTON
Claimant

HY-VEE INC
Employer

APPEAL 18A-UI-04079-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/11/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 26, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 25, 2018. Claimant participated. Employer participated through hearing representative Lisa Harroff and store director Jeremy Odem. Assistant produce manager Mark Hoffman attended the hearing on behalf of the employer. Current store director Chris Gordy observed the hearing on the employer's behalf.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a floral manager from April 26, 2004, and was separated from employment on February 15, 2018, when she quit.

Approximately two or three weeks prior to February 15, 2018, claimant met with Mr. Odem and she discussed that she was not happy with her job. Claimant told Mr. Odem that she had other job offers. Mr. Odem told claimant that he wanted her on his team.

On February 15, 2018, Mr. Odem was laughing and talking with Mr. Hoffman when claimant walked by quickly. Because claimant was walking so fast, Mr. Odem asked where she was going. Claimant stated "I quit, I'm done." Mr. Odem responded, "what, you quit?" Claimant did not respond to Mr. Odem. Mr. Odem is not sure claimant heard him because she was walking so fast. Mr. Odem did not observe claimant crying as she was leaving. Claimant then left the store. Mr. Odem asked Mr. Hoffman what just happened and he went back to the floral department to see what was going on. Mr. Odem spoke to Chelsea (a produce employee) and Shawna (a product management employee). Chelsea and Shawna were both crying and told Mr. Odem that claimant had quit. Mr. Odem then spoke to Penny (a part-time floral employee). Penny was not sure of the specifics, but she did know that claimant was upset. Mr. Odem then made sure the floral department was operating sufficiently. Approximately an hour later, Mr.

Odem called claimant. Mr. Odem asked claimant how she was doing. Claimant again told Mr. Odem she was done. Claimant told Mr. Odem she was frustrated. Claimant told Mr. Odem that Mark Miller (a full-time baker) had been swearing at her and saying it was not his job to put the shelves back. Claimant told Mr. Odem she was also frustrated with Brian Davis (the assistant director of store operations). Claimant stated that Mr. Davis told her he wanted the break room put back together. Claimant thought the break room was put back together and she did not know there were dirty buckets in the break room. Mr. Odem reiterated that claimant had walked out and quit. Mr. Odem told claimant she could contact him by Monday if there was anything else she wanted to discuss. On February 15, 2018, claimant did not tell Mr. Odem that she would be at the store to perform inventory on February 19, 2018. On February 15, 2018, Mr. Odem did not tell claimant that he wanted her on his team; he only asked how she was and what had happened. After Mr. Odem finished talking with claimant, he went and spoke to Mr. Miller about the incident with claimant. Mr. Miller admitted he did swear, but he stated it was not at claimant. Mr. Miller stated he was frustrated that he was just now working on the shelves. The employer has a policy that prohibits employees from using profanity. The employer then disciplined Mr. Miller for swearing. Mr. Odem also spoke to Mr. Davis about his interactions with claimant. Mr. Davis stated he was following Mr. Odem's directions to get the store back to the way it should be.

On February 17, 2018, claimant called Mr. Hoffman and told him that she would be at the store on Monday (February 19, 2018) to perform inventory. Mr. Hoffman contacted Doyle Kelsey (produce manager) about what claimant had told him. Mr. Kelsey then reported the information to Mr. Odem. Mr. Odem called claimant on February 17, 2018 and told her that she had separated from employment on February 15, 2018. Claimant stated she did not quit. Mr. Odem reminded claimant that she had quit.

The employer never told claimant she was discharged. The employer did not tell claimant that she had to quit or she would be fired. The employer had work available for claimant had she not quit. Claimant did not have any disciplinary warnings in her final two years of employment.

Prior to February 15, 2018, claimant approached Mr. Odem about not having received a raise. Mr. Odem asked her if she was sure. Mr. Odem then checked and determined claimant had not received a raise. Mr. Odem then processed a raise for claimant.

REASONING AND CONCLUSIONS OF LAW:

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

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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. 871-24.25(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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

On February 15, 2018, claimant walked quickly past Mr. Odem and told him she quit and she was done. Mr. Odem asked claimant if she was quitting, but she did not respond and left the store. Although Mr. Miller had used profanity around claimant on February 15, 2018, the

employer has a policy that prohibits employees from using profanity and claimant, as a manager, had the authority to discipline Mr. Miller. Claimant also had the option to report Mr. Miller's conduct to Mr. Odem if she did not feel comfortable confronting Mr. Miller. Claimant never mentioned Mr. Miller's conduct to Mr. Odem before she told Mr. Odem she quit and left the store. It is noted that prior to February 15, 2018, claimant had approached Mr. Odem because she had not received a raise and when Mr. Odem discovered that she had not received her raise, he immediately resolved the situation. Claimant also failed to establish that a reasonable person would find Mr. Davis's comments about picking up the break room had created an intolerable work environment.

Claimant has not demonstrated that a reasonable person would find the work environment detrimental or intolerable. *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). Claimant has not met her burden of proving that her voluntary leaving was for good cause attributable to the employer. 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 according to Iowa law. Benefits must be denied.

DECISION:

The March 26, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs