

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORENA L MEDINA
Claimant

REMBRANDT ENTERPRISES INC
Employer

APPEAL 15A-UI-08115-SC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/21/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 13, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination the claimant resigned and the employer accepted her resignation. The parties were properly notified about the hearing. A telephone hearing was held on August 7, 2015. Claimant Lorena Medina participated on her own behalf with the assistance of interpreter, Pedro Duenas. The claimant's sister, Claudia Medina, also participated on the claimant's behalf. Employer Rembrandt Enterprises participated through Pamela Winkle and Charo Marcos. Employer's Exhibit 1 was received.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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 breaker handler beginning September 4, 2013, and was separated from employment on April 30, 2015. On February 10, 2015, the claimant notified her supervisor Eliza Rivera that she needed to start maternity leave three days later and would return on April 3, 2015. Rivera filled out the Employee Change Notice form and notified the claimant she would need to fill out documents for job protected leave under the Family Medical Leave Act. The claimant did not fill out the necessary paperwork and began her leave on February 10, 2015 without notifying the employer. On April 3, 2015, the claimant did not contact the employer or return to work. Human Resources Administrator Pamela Winkel and Human Resources Recruiting Clerk/Translator Charo Marcos attempted to reach the claimant, but she did not return their phone calls.

On April 29, 2015, at 11:00 a.m. the claimant called Marcos and informed her that she was quitting her employment. That same afternoon, at approximately 3:30 p.m., the claimant's sister, Claudia Medina, dropped off a doctor's note excusing her from work through June 29,

2015. Due to the confusion of the conflicting messages, Winkel contacted the claimant's doctor to find out if there was a medical reason the claimant could not work. His nurse shared that she was on medication, but the side effects would not prohibit her for working. She also stated the claimant only wanted additional time off to be with the baby. Marcos contacted the claimant and asked her to meet with Winkel and Human Resources Manager Lori Karr on May 1, 2015.

During the meeting on May 1, 2015, the claimant said she did not want to quit but could not return to work until June 29, 2015. Winkel explained she had spoken to her doctor and there was no medical need to remain out of work. They offered to extend the claimant's leave until May 12, 2105, but explained they needed someone to fill her position. The claimant declined the offer. Winkel explained the employer was accepting her resignation from April 29, but stated the claimant was a good employee and offered her the opportunity to reapply for a position when she was able to work again.

REASONING AND CONCLUSIONS OF LAW:

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

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(37) 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 § 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 § 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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).

The claimant denies making a phone call at 11:00 a.m. on April 29 in which she stated she was quitting her employment. Medina testified she never heard the claimant say she quit and that the phone call on April 29 was initiated by Marcos. However, Medina was not with the claimant until 11:30 a.m.

The employer alleges the claimant made a phone call at 11:00 a.m. on April 29 to say she quit her employment to be with her children. The employer provided the testimony of Marcos who received the claimant's phone call. It also provided documentation that Marcos prepared that day stating the claimant was resigning to stay home with her child.

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. *State*, 548 N.W.2d 163. 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 appearance, 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).

After assessing the credibility of the witnesses 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's version of events to be more credible than the claimant's recollection of those events. The claimant made inconsistent statements at times during her testimony. Initially, she acknowledged she had plans to go to Mexico with her family in early May, but then later denied she told the employer about her plans or that she had plans to go. Additionally, while Marcos has some interest in the outcome of the hearing, as she is still employed by the employer, the claimant has a greater interest in the outcome of the hearing and would have more of an incentive to provide unreliable testimony. Marcos' testimony is also consistent with the exhibits provided; whereas, the claimant has provided no evidence to support her version of the events on April 29.

The claimant verbally submitted her resignation and the employer accepted her resignation. She has not shown that she voluntarily quit with good cause attributable to the employer. Benefits are denied.

DECISION:

The July 13, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/css