

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EMILY M AITCHISON
Claimant

MOSAIC
Employer

APPEAL 17A-UI-11469-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/15/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 2, 2017, (reference 01) unemployment insurance decision that denied benefits based on her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on November 30, 2017. The claimant participated and testified. The employer participated through Hearing Representative Barbra Toney and witnesses Teresa Tekolste and Tammy Rodningen. Tanisha Benson was also present on behalf of the employer but did not testify. Employer's Exhibits 1 through 6 were received into evidence.

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 direct support associate from September 22, 2015, until this employment ended on September 16, 2017, when she voluntarily quit.

On September 16, 2017, claimant sent an email to her immediate supervisor informing her that she was resigning effective immediately because she had accepted another job offer. (Exhibit 1). Claimant testified, while she had been applying for other jobs and been offered other employment, she did not accept that offer and it was not the real reason she quit. According to claimant, the real reason she resigned was because of changes the employer was making with scheduling that she did not agree with and felt were not safe for residents or employees. Claimant testified, several months before she resigned, the employer had said it was going to start having people work double shifts, though this later changed to a procedure where they would only provide three hours' notice if someone was going to have to work a double shift. Claimant explained she shared a vehicle and this was not practical for her.

Claimant further testified, her biggest concern was related to staff to client ratios in the homes. State regulations require two staff members for every six clients. Claimant testified it was often the case that there would only be one support associate and one med passer assigned to a

home. Claimant went on to explain the med passer also had to pass medication at the home next door and would have to leave, sometimes for an hour at a time. An associate from the other home was supposed to come over while the med passer was gone, but this did not always happen according to claimant. Claimant testified during a State inspection the employer was told they were required to have two staff members present in the homes to meet ratio, not including the med passer. Rodningen testified she was aware of the two staff member requirement, but was not aware of any directive that one of those staff members could not be the med passer.

Claimant testified she reported her concerns with understaffing on multiple occasions, most recently when she saw Associate Director Tasha Ludwig on September 14, 2017. Rodningen and Tekolste both testified they had not received any reports of staff being left to supervise homes by themselves, though they admitted they were short-staffed and operating at minimum ratio requirements. Tekolste further testified that, while she had not specifically spoken to Ludwig about any reports she may have received regarding homes being under ration, Ludwig was with her in Kansas City all day on September 14 and claimant could not have seen her that day. According to claimant she did not mention these concerns in her resignation letter because she had already reported them so many times before.

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.

Iowa Code section 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 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:

(3) The claimant left to seek other employment but did not secure employment.

...

(21) The claimant left because of dissatisfaction with the work environment.

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 decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

Here, there are issues with credibility for both parties. However, the fact that claimant's resignation letter directly contradicts her testimony cannot be overlooked. After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, 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.

Claimant voluntarily resigned to accept other employment. While claimant may have ultimately declined the other offer of employment and though her leaving 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 are denied.

DECISION:

The November 2, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs