

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARI L PUETZ
Claimant

**PLYMOUTH COUNTY SOLID WASTE
AGENCY**
Employer

APPEAL 16A-UI-03119-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/14/16
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 3, 2016 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 26, 2016. Claimant participated and was represented by Gene Collins, Attorney at Law. Participating as witness on the claimants behalf were Corey Puetz, her husband; Mike Lindsey, a former truck driver; Nick Langle, construction and demolition operator; Mike Groetken, a former equipment operator; Kevin Vaske, a former employee; Michelle Bruscher, former secretary; and Dave Tentinger, assistant manager. Employer participated through Mark Kunkle, Manager and was represented by Marten A. Trotzig, Attorney at Law. Participating as witnesses on the employer behalf were Rick Bohl, Chairman of the Plymouth County Solid Waste Agency Board, and Mark Loutsch, Board member. Employer's Exhibit One was entered and received into the record. Department's Exhibit D-1 was entered and received into the record.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

STIPULATION:

The parties stipulated that during her exit interview the claimant reported that Mr. Kunkle yelled at her while she was an employee.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a secretary beginning on April 1, 2013 through February 12, 2016, when she voluntarily quit due to the intolerable work environment created by her manager, Mr. Kunkle. Mr. Kunkle regularly yelled at employees including the claimant when they did something that displeased him. The offending employee action could be something as simple as asking a question he did not approve of or reporting when a piece of equipment malfunctioned or was broken. Mr. Kunkle would yell at the reporting employee, even if there

was no evidence the employee had done anything to cause the malfunction or damage. After yelling at the employee, Mr. Kunkle would then give them the 'silent treatment' for one or two days. Mr. Kunkle would also disclose confidential personnel information, including personal medical information to a group of men who met regularly in the morning to have coffee at the landfill. Mr. Kunkle told the group that after the claimant returned from maternity leave, if she used any other leave he was going to fire her. Mr. Kunkle revealed personal medical information he had as a supervisor about employee Mike Lindsey to the claimant. Even after the claimant told him she did not want to hear of others personal issues, Mr. Kunkle continued to reveal confidential employee information.

All of the former employees provided details of essentially the same treatment by Mr. Kunkle over the years. As the manager, Mr. Kunkle was responsible only to the board so employees were left with nowhere to go for redress but to the board members. Many of them had complained to various board members over the years to no avail. The evidence establishes that Mr. Bohle, Mr. Lutsch, and Barry Cornish, another board member, had all received numerous similar complaints from employees but took no action to address the employees concerns about how Mr. Kunkle treated them.

The claimant held the position formerly occupied by Ms. Bruscher. Ms. Bruscher experienced the same issues with Mr. Kunkle as did the claimant. Ms. Bruscher complained about Mr. Kunkle yelling at her and belittling her but the board to no action to remedy her complaint or to even investigate it. Approximately one year prior to her resignation the claimant was off on maternity leave. During her time away, the temporary substitute employee was left in tears when Mr. Kunkle yelled at her. His action was reported to a board member who, as had become the habit, took no action to correct Mr. Kunkle's behavior.

The final incident for the claimant was when Mr. Kunkle wanted her to perform one of his job duties, filling out an RCC form for the Iowa DNR. The claimant was not certified to fill out the form. The claimant had no training how to fill out the form and despite Mr. Kunkle's allegations to the contrary, it was not simply a secretarial or data entry task she was being asked to perform. Mr. Kunkle yelled at her during the event. The claimant had endured the same situation over and over and finally reached her breaking point and voluntarily quit rather than continue to endure abuse from Mr. Kunkle. The claimant's family doctor had put her on anti-depressant medication two months prior to her leaving, due solely to her work related stress caused by Mr. Kunkle's abusive treatment of her. The claimant was not shirking responsibilities; she was an excellent employee who went over and above the expected requirements in the performance of her job duties. She was simply tired of being belittled, yelled at, and shunned when all she was doing was performing her expected tasks. When cleaning the break room one day, the claimant shoved a table to move it. The table broke. The claimant reported the incident to Mr. Kunkle who used the opportunity to tell the 'coffee group' of men the next day that the claimant had broken the table when she was having sex on it with another employee.

On occasion the claimant was off work to care for a sick child. While she was allowed the time off work, Mr. Kunkle would punish her for actually using the time by giving her the silent treatment when she next returned to work.

Prior to the claimant quitting her husband had complained on her behalf to a board member about how Mr. Kunkle was treating the claimant and as had become the practice, the board took no action.

Two current employees, who testified only under subpoena, confirmed all of the former employee's testimony that Mr. Kunkle regularly yelled at employees; including each of them. On one new employees first day on the job, Mr. Kunkle took him around the job site and spent the time making derogatory and demeaning comments about his current employees.

Over the last five years, at least nine employees have left due to the way Mr. Kunkle treated them. Even with the employee turnover and repeated consistent complaints, the board took no action to stop Mr. Kunkle until this claimant sought unemployment insurance benefits. Since this began, Mr. Kunkle has been placed on indefinite probation and told that if there is another justified complaint against him, he will be discharged. The board action indicates the board did not approve of the way Mr. Kunkle was treating employees, particularly the claimant.

Mr. Kunkle also would yell at customers. One of the truck drivers had his boss call Mr. Kunkle. The customer's boss forbade Mr. Kunkle from yelling at or trying to discipline his employees. The board had received complaints from customers about Mr. Kunkle but took no action on those complaints.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her 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(3) and (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:

(3) The claimant left due to unlawful working conditions.

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

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 Ct. 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*, 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. *State v. Holtz*, Id.

Mr. Kunkle was not a persuasive witness on behalf of the employer. He was evasive during questioning and his characterization of his voice as 'stern' or 'strong' voice was not believable. The evidence from the current and former employees was consistent and voluminous. Mr. Kunkle regularly engages in yelling at employees, the silent treatment and disclosure of confidential information. The board had ample opportunity to act to remedy the situation but chose to do nothing under the seeming rational that Mr. Kunkle is "just that way." While the claimant was a hard worker and Mr. Kunkle a procrastinator, the detrimental work relationship was more than a mere personality conflict between the two. Mr. Kunkle created an intolerable work environment for claimant by repeatedly yelling at her, giving her the silent treatment, revealing confidential information to her and about her. The board's failure to address her complaints and the multiple employee complaints over the course of several years created an employer controlled intolerable work environment. Under these circumstances her leaving was with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The March 3, 2016 (reference 01) decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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