

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FIDEL H TORRES
Claimant

PLAAS INC
Employer

APPEAL 18A-UI-04011-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/04/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 21, 2018 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 24, 2018. The claimant, Fidel H. Torres, participated personally. The employer, Plaas Inc., participated through witnesses Tagen Cullison and Taite Plaas.

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 journeyman welder from September of 2017 until February 22, 2018. His immediate supervisor at the time of separation from employment was Leo Kraber.

Claimant quit because he did not get along with his supervisor, Mr. Kraber. He tendered his verbal resignation to Mr. Cullison. Claimant testified that Mr. Kraber made derogatory comments to him and other employees on numerous occasions and used profane language in the workplace; however, Mr. Kraber did not make derogatory comments to claimant or use profane language at him in the workplace. Claimant testified that he believed Mr. Kraber was using illegal drugs at the workplace; however, claimant did not report this to management.

Both Mr. Cullison and Mr. Plaas never received any reports that Mr. Kraber was making defamatory comments or using profane language in the workplace. When Mr. Cullison investigated Mr. Kraber's supervisory skills, he did not witness any improper remarks. Mr. Cullison interviewed each employee on claimant's crew and no other co-workers indicated that Mr. Kraber's actions in the workplace were ever inappropriate or concerning.

Claimant had no previous discipline during the course of his employment and he was not going to be laid off or discharged from employment. There was continuing work available to him had he not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Claimant determined he could no longer work with Mr. Kraber. Claimant had an intention to quit and carried out that intention by tendering his verbal resignation. As such, 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).

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.

If claimant establishes that he left due to intolerable or detrimental working conditions, benefits would be allowed. Notice of an intent to quit based upon intolerable or detrimental working conditions is not required. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice of his intent to quit with regard to the intolerable or detrimental working conditions.

However, claimant must prove that his working conditions were intolerable or detrimental. Further, while a claimant does not have to specifically indicate or announce an intention to quit if his concerns are not addressed by the employer, for a reason for a quit to be “attributable to the employer,” a claimant faced with working conditions that he considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc.*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem, it then has made the cause for quitting “attributable to the employer.”

Conversely, 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 § 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:

(22) The claimant left because of a personality conflict with the supervisor.

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 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 that Mr. Cullison's and Mr. Plaas' testimony is more credible than claimant's testimony.

Claimant testified that other co-workers heard Mr. Kraber's derogatory comments and use of profane language; however, no other witnesses testified or submitted written statements regarding these issues. Mr. Cullison credibly testified that he interviewed co-workers and no one else reported that Mr. Kraber used derogatory or profane language. Further, claimant failed to present credible evidence that there were unsafe working conditions at the employer that would justify him voluntarily quitting his employment.

The claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The March 21, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs