IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JORDAN NELSON Claimant **GL DODGE CITY LLC** Employer	**APPEAL 21A-UI-18063-SN-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/27/20** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant, Jordan Nelson, filed an appeal from the August 11, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary resignation. The parties were properly notified about the hearing. A telephone hearing was held on October 7, 2021. Claimant participated and testified. The employer participated through Regional Human Resources Manager Sarah Van Den Broeke and Manager Jim Hansen. The employer was represented by Unemployment Insurance Hearing Representative Jan Ferris. No exhibits were admitted into the record.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

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 sales associate from January 31, 2020 until she was separated from employment on June 30, 2020, when she quit.

For the first three months, the employer paid the claimant $3,000.00 plus any commission she received in addition to commissions on sales for February, March and April 2020. In May 2020, the claimant was paid $4,000.00 plus commissions. If an associate sold fewer than 10 cars in a month, then they were given a 14% commission on their sales. If they sold more than 10 cars, then they were given a 20% commission on their sales.

For the first couple of weeks, the claimant was selling cars by herself without much of any formal training. Eventually, the claimant found a training manual that she used to train herself further. There are two sales managers to help new associates on each side of the building with making a sale. Internet leads were assigned randomly to whomever is sitting at the desk.

The claimant has psuedotumor cerebri and asthma. The claimant has had asthma since she was a child. She chronically gets bronchitis which has led to scarring of her lungs. The claimant has never been hospitalized for an asthma attack, but she uses a rescues inhaler frequently. Psuedotumor cerebri is a condition, in which the body's immune system is preoccupied with fighting off a false brain tumor. These conditions make the claimant more susceptible to Covid19 infection and death. The employer recommended mask wearing to its employees. It also ordered masks and hand sanitizer that were readily available.

In May 2020, in response to a survey regarding work life balance, the employer reduced hours on the lot. Prior to the survey, the lot was open from 8:00 a.m. to 8:00 p.m. Monday through Saturday. After the survey, the lot was only open from 8:00 a.m. to 6:00 p.m. Thursday through Friday, with the other days having the same hours.

In early-June 2020, the claimant complained about Sales Manager Jim Scarliss to Human Resources Manager Sara Van Den Broeke. In particular, the claimant claimed Mr. Scarliss said that he said, "It is time for an all-female walk around to see how the men do it," on one of the first days she encountered him. At the time, the claimant made the report she was already in a new department and did not have regular contact with Mr. Scarliss.

On June 30, 2020, the claimant submitted her resignation to Ms. Van Den Broeke. The claimant told Ms. Van Den Broeke that she was quitting because she did not believe she received adequate training and that tenured associates were getting better leads than she was.

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

Iowa Admin Code r. 871-24.26(2) and (4) provide:

> 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:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.
>
> (2) The claimant left due to unsafe 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 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 the following allegations made by the claimant not credible:

1. The claimant's allegation that her hours were cut in half in May 2020 is not credible. The administrative law judge found this allegation not credible because the employer's witnesses credibly denied the reduction was as substantial and gave specific scheduling information regarding the change.
2. The claimant's allegation that the employer made little effort to mitigate Covid19 infection spread is not credible. The employer's witnesses described many efforts made by the employer to mitigate Covid19 infection spread.
3. The claimant's allegation that leads were given to more tenured associates is not credible. The claimant made this allegation, but she did not provide any specifics beyond a broad allegation of favoritism.

In this case, the claimant gave her notice of resignation. In that context, the claimant must show she quit with good cause attributable to her employer. The claimant essentially alludes to two good causes attributable to her employer, but she fails to meet the standard for both.

Change in Contract of Hire
In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988).

The claimant essentially contends that the employer changed her contract of hire by reducing the amount of time she spent on the lot and by giving better leads to tenured associates. As illustrated in the findings of fact above, the administrative law judge does not find the claimant's allegation that the employer cut the days she was on the lot in half in May 2020. Instead, he finds that the employer reduced the hours on four days by two hours. He also finds the claimant's allegation of favoritism in the assignment of leads not credible. Furthermore, the claimant had just started in the position, which makes her contention that her contract was altered much more speculative, given a substantial amount of her pay was based on commissions. The claimant has not met her burden to show her contract of hire was changed substantially due to this reduction of hours in May 2020.

Intolerable Working Conditions
A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. The Iowa Supreme Court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005).

In this case, the administrative law judge concludes the claimant has not met her burden to show her working conditions were intolerable. Within this category, the claimant contends her working conditions were intolerable for the following reasons: (1) the employer's inadequate Covid19 mitigation policy, (2) the employer's substandard training program, (3) and hostile work environment allegations against her former supervisor Mr. Scarliss.

As illustrated in the credibility section, the administrative law judge finds the employer adopted a reasonable Covid19 mitigation plan. While it may have been less than ideal, the employer took steps to mitigate the spread of Covid19 by providing masks and hand sanitizer to staff. There is nothing in the record to support the notion the claimant complained about this specific objection. While a complaint is not required per se, the lack of a complaint gets to the reasonableness of the claimant's resignation.

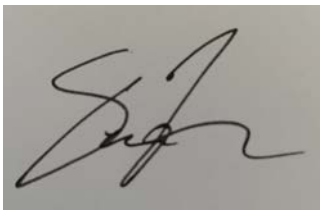
The administrative law judge also finds that the employer's means of training is poor enough to justify a reasonable employee resigning. This is especially the case because the record does not support the notion the claimant reported concerns regarding training.

Finally, the administrative law judge finds the claimant's allegation regarding Mr. Scarliss' behavior as not severe or pervasive enough to render her working conditions intolerable.

While claimant's 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 August 11, 2021, (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.



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Sean M. Nelson
Administrative Law Judge
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Fax (515) 725-9067

October 27, 2021
Decision Dated and Mailed

smn/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at https://www.iowaworkforcedevelopment.gov/pua-information. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.