

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOAN M MEFFERD
Claimant

HY-VEE INC
Employer

APPEAL 16A-UI-08987-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/17/16
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 9, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 6, 2016. The claimant participated personally. The employer participated through James Tranfaglia, hearing representative with Corporate Cost Control. Kelly Nieland and Lisa Pick testified for the employer. Claimant exhibits A through D were received into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the 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: The claimant was employed -time as a store accounting coordinator and was separated from employment on July 16, 2016, when she resigned. Continuing work was available.

The event triggering the claimant to quit the employment occurred on July 8, 2016, between the claimant and her immediate supervisor, Lisa Pick. While performing work in the office (where no customers were present), Ms. Pick engaged in a discussion with the claimant about work being done, as she was preparing to leave for vacation. The claimant found Ms. Pick's actions to be demeaning and harassing, specifically, when Ms. Pick commented to the claimant that she was "slow at everything." The claimant had not yet completed her training, but had begun employment in December 2015. The claimant responded by laughing and saying "wow" repeatedly. Frustrated, Ms. Pick left the room to end the confrontation. There is no allegation that Ms. Pick used profanity or screamed at the claimant.

The claimant then went to Kelly Nieland, in human resources, to report what had happened. Ms. Nieland stated that upon Ms. Pick's return from vacation, a discussion would take place with both parties to work through matters as well as coordinate a program to finish the claimant's

training. Ms. Pick went on vacation, and the claimant thought about her resignation, before notifying the store director, Scott Threlkeld of the incident and her intention to resign (Claimant exhibit B). The claimant made no efforts to transfer to a different store location prior to resigning, or to see what resolution could come from a post-vacation meeting with Ms. Pick and human resources.

Prior to July 8, 2016, the claimant had one other incident of conflict where Ms. Pick raised her voice, stating she needed a vacation and yelling at the claimant about why she didn't have work completed. The claimant reported the conduct to human resources, and Ms. Pick was verbally reprimanded for her conduct. The evidence is disputed as to whether Ms. Pick also apologized to the claimant for her behavior.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the 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. 871-24.25(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 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:

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

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. See 871 IAC 24.25. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

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 weight of the evidence in the record fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

The administrative law judge is not persuaded the conversation, words used or conditions between the claimant and her supervisor, Lisa Pick, were escalated to a point that would be deemed harassment or a hostile work environment, but rather due to personality conflict. The credible testimony is that during the claimant's seven months of employment, twice Ms. Pick, essentially "snapped" at the claimant, by way of being frustrated. In the first incident in February 2016, Ms. Pick raised her voice, and no customers heard. She did not use profanity, and was verbally reprimanded. In the second instance on July 8, 2016, Ms. Pick neither yelled nor used profanity, nor confronted the claimant in front of others, but rather, stated she was slow at everything, inasmuch as the claimant had not yet completed her training program yet, and Ms. Pick was frustrated as she headed into her vacation without adequate work coverage. It cannot be ignored that the claimant's response to Ms. Pick was not of genuine concern but rather laughing and repeatedly saying "wow", which could be construed as unprofessional and disrespectful given Ms. Pick was her manager. Regardless, when she brought forth her concerns to the employer, the immediate response was to find a way to reconcile the matter and reorganize her training. Rather than see what solutions may be proposed, the claimant quit. A claimant with work issues or grievances must make some effort to provide notice to the employer to give the employer an opportunity to work out whatever issues led to the dissatisfaction. Failure to do so precludes the employer from an opportunity to make adjustments which would alleviate the need to quit. *Denvy v. Board of Review*, 567 Pacific 2d 626 (Utah 1977).

Based on the evidence presented, the claimant quit due to a personality conflict with her manager, Lisa Pick. While the claimant's leaving the employment 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 must be denied.

DECISION:

The August 9, 2016, (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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs