

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANN L MELLINGER
Claimant

BURLINGTON STAGE LINES LTD
Employer

APPEAL NO. 18A-UI-06406-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/13/18
Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 1, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 27, 2018. Claimant participated. Employer participated by Mark Moore and Sarah McGee. Employer's Exhibits 1-2 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 15, 2018. Claimant voluntarily quit her job on that date. Claimant was hired as a human resource manager on or around April 6, 2018. Prior to hire, claimant and employer came to an agreement that employer would be dividing a large office where claimant and her assistant-to-be were to share office space such that claimant would have her own office.

Claimant and employer agreed that during the time when claimant worked for employer, employer had adjusted the wiring in the office such that two offices could be used in the space. Employer had also received estimates for the HVAC work that would be needed to take place to create two offices.

Claimant went to employer on multiple occasions during the time working for employer asking if employer would convert other offices to her private office. Employer had not moved on any of claimant's suggestions to move her office into a library or other room. Employer did offer to claimant that at any time she could have calls transferred to the library and use that room whenever she needed privacy.

Employer stated that during claimant's time working for employer, claimant was not effectively doing her job. On May 10, 2018, claimant was given a Written Notice for her multiple errors in performing her job duties within her first month of work for employer. Claimant took this Notice

home and then brought it back signed the next day. In signing the Notice, claimant admitted her multiple errors. At the time of this hearing, employer told claimant that they were not moving forward at that time with building a separated office for claimant as they weren't sure if this job would work out.

On May 14, claimant met with employer regarding a recent error that was committed after the receipt of the previous Written Notice. Employer orally spoke with claimant regarding this most recent error.

Later in the day on May 14, 2018, claimant went to employer and offered her resignation. She attempted to secure a promise that employer would not contest unemployment, but was unable to secure this promise. Claimant stated that she told employer that she was quitting because her lack of a private office didn't allow her to focus properly on her job. Employer said claimant told him that things just weren't working out.

Employer still had work available for claimant at the time of her quit.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because she was unhappy that her separate office had not been created as quickly as she wanted it to happen.

Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* In this matter, many factors must be considered to determine if claimant had good cause to quit. Claimant had negotiated a separate office space at the time of hire. The negotiation did not include any timeframe for construction of the separate office.

After claimant started working for employer in early April, employer started efforts towards converting the large office into two smaller ones. Electrical work had been completed and HVAC bids taken. Employer was moving in good faith towards creating the two offices. Claimant decided that she might prefer to have another office converted from a meeting room to her office. This reasonably caused hesitation from employer as employer didn't want to spend many thousands of dollars for a room claimant ended up not wanting. Employer offered the option of claimant using the meeting room, transferring her calls, and getting privacy. Claimant demurred.

Within a month of claimant's start date, it became obvious that claimant was not doing her job properly and may not have had the knowledge necessary. Employer gave claimant a warning as to multiple errors, and then another oral warning a few days later. At the time of the first warning, claimant was told that the construction of the room was being put off for the time being. This too is deemed reasonable as employer had offered a different solution that would allow claimant privacy, and putting a large sum of money towards an employee who may not be capable of doing her job is not a wise investment.

Claimant's choice to quit soon after receiving a second warning is not deemed to be for good cause attributable to employer as claimant's multiple errors created a reasonable caution on the part of employer as to claimant's ability to carry out the functions of her job. On the date of claimant's quit, she still had work available to her from employer so employer did not force claimant to quit. Benefits are denied.

DECISION:

The decision of the representative dated June 1, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn