IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ALISHA A KRUSE Claimant **COUNTY OF CLINTON STATE OF IOWA** Employer	**APPEAL 17A-UI-09453-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/20/17** **Claimant: Appellant (1R)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 11, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 2, 2017. Present for the first hearing were the claimant and Kelsey A. Marquard, attorney at law. The employer was represented by Amy L. Reasner, attorney at law. Dawn Aldridge, director of human resources and Steve Diesch attended as well for the employer. No testimony was taken and the hearing was continued to October 4, 2017. At the second hearing, held by telephone on October 4, 2017, the claimant participated personally and was represented by Kelsey A. Marquard, attorney at law. The employer was represented by Amy L. Reasner, attorney at law. Dawn Aldridge, director of human resources, testified on behalf of the employer. Rick Lincoln, sheriff, and John Ernst, deputy, also testified.

Claimant Exhibits 1 through 6, and Employer Exhibit A were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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 the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Alisha Kruse, was also referred to as “Alisha Wirth” during her employment. As such, her work records (and hearing Exhibits) refer to her by Deputy “Alisha Wirth.” The claimant began employment with the county as a corrections officer in 2008, and became a deputy in 2011. She was assigned to be “on the road” from 2013 until separation. The claimant last performed work on May 12 or 13, 2017. She then went on personal leave of absence through Family and Medical Leave Act (FMLA) until she resigned on June 27, 2017 (Claimant Exhibit 4). Continuing work was available.

The undisputed evidence is the claimant was the sole female deputy for the county, and she worked with approximately 12 other male deputies. Her chain of command included a sergeant, lieutenant, chief deputy, and sheriff. At the time of the claimant's separation, the employer contracted human resources services with Paul Greufe. The employer thereafter hired Dawn Aldridge, current director of human resources.

In her resignation letter, the claimant stated she "cannot survive in the hostile work environment" and stated for years she worked "with other deputies refusing to back me up, spreading rumors and accusing me of being overly emotional" (Claimant Exhibit 4). Beginning in 2013, the claimant documented various incidents of unprofessional conduct and offensive comments made to and about her, based upon her gender. The incidents involved both deputies and individuals within the claimant's chain of command. The claimant first made the employer aware she was being treated differently than her male peers in 2014 but no action was taken (Claimant Exhibit 3). Out of fear, and because she loved her job, she did not file a formal complaint or grievance, or elect to bypass the chain of command until late 2016.

In late 2016, the claimant confronted Chief Deputy Ken Cain regarding her concerns, which included being isolated, being called a "home wrecker" and a co-worker filing an "anonymous" complaint against her, based upon conduct in her personal life (Claimant Exhibit 1). In response, Mr. Cain requested the claimant document specific examples of mistreatment from her co-workers, and the claimant prepared a written statement on January 19, 2017 (Claimant Exhibit 2). At the employer's request, the claimant sent another written statement, which was addressed to Paul Greufe, a contracted human resources associate, on February 9, 2017 (Claimant Exhibit 3).

An internal investigation began, with affected employees being notified on March 3, 2017. On March 8, 2017, the claimant filed a complaint with the Iowa Civil Rights Commission as well. The claimant continued to work side-by-side with the individuals being investigated for their conduct towards her. Neither the employer, nor claimant requested the claimant transfer locations or shifts while the investigation was pending. The claimant stated as a result of the pending investigation, she was further isolated, that her co-workers were lying about her, and that she was not getting the kind of voluntary back up that her male counterparts would receive.

Generally, back up for calls could be requested by the dispatcher, the officer handling the call or other officers voluntarily going to a call not assigned to them, to back up the responding officer. The claimant did not have the same type of voluntary back up support as her peers, but otherwise received back up when requested, with the exception of one incident on March 28, 2017, which involved the claimant restraining someone at a hospital, being unable to call for back up herself, and requesting 911 be called on her behalf by hospital staff.

Around May 12 or 13, 2017, a male co-worker informed the claimant that there were rumors of a video circulating. The incident involved the claimant dancing at a bachelor party, where another deputy was present. Neither the claimant nor the deputy who reported the rumor, saw the purported video. Due to the emotional toll associated with her ongoing work conditions, and the most recent rumor, the claimant sought medical care related to her mental health. No doctor advised the claimant to quit the employment and the claimant has not been released to return to employment by her treating physician. Rather than quit the employment altogether, the claimant began a leave of absence, and while the claimant was on the leave of absence, the employer continued its internal investigation based on the claimant's concerns.

On June 15, 2017, the employer proposed the claimant remain on a paid leave of absence, upon the expiration of FMLA, while the employer completed its investigation, and reviewed

acceptable solutions, which would allow the claimant to return to the employment. During the same week, the claimant learned of a gruesome murder that occurred in Clinton County, (Claimant Exhibit 5). On the claimant's own initiative, she investigated and learned through court documents that the double murder was discovered by two male deputies in her department, who were responding to a "welfare check" (Claimant Exhibit 5). The employer asserted there is no standard assignment of deputies for a welfare check or other calls, and that they vary based upon the circumstances. The claimant opined from the court complaint that if she had been the deputy responsible for this call, she likely would have been sent on the welfare check alone, without a backup deputy and would have discovered the double murder alone. She concluded the employer's handling of this call, by way of two male deputies responding to the call together, further validated her feelings of disparate treatment and tendered her resignation approximately ten days later, on June 27, 2017 (Claimant Exhibit 4). The claimant was still on the voluntary leave of absence when she resigned, and the employer was still conducting its investigation regarding her complaints.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was without good cause attributable to the employer, according to Iowa law.

Iowa Code § 96.5-1 provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
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> 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(27) 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:
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> (27) The claimant left rather than perform the assigned work as instructed.

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. 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). 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. Iowa Dep't 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 element of good

faith." *Wiese v. Iowa Dep't of Job Serv*., 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id*.

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 claimant 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 establishes claimant resigned for compelling personal reasons, but has not met her burden of proof to establish she quit for good cause reasons attributable to the employer and according to Iowa law.

In no way does the administrative law judge condone the unprofessional comments or conduct experienced by the claimant, which led to her December 2016, formal complaint to the employer (Claimant Exhibit 1, 2, and 3). An employee has the right to work in an environment free from unwanted vulgar language, sexual propositions, and insensitive and offensive comments. An employee also has the right to expect that management, when notified about such conduct, will take reasonable steps to end the harassment or treatment. The credible evidence presented supports that when the claimant made Mr. Cain aware of her workplace concerns in December 2016, he escalated the matter to human resources consultant, Paul Greufe, for further investigation. The claimant was requested twice to detail her complaints (Claimant Exhibit 2 and 3) to aid the employer's internal investigation.

The claimant continued to work with her male peers, referenced in her complaints, while the investigation was pending, until May 2017, when she initiated a personal leave of absence to tend to her mental health. While on the leave of absence, the claimant was informed by the employer that she could take a continued paid leave upon expiration of FMLA, so she would not have to return until the employer had completed its investigation and had proposed solutions available to the claimant. The administrative law judge is sympathetic to the incidents involving the claimant which led to her complaint, but cannot ignore that she quit the employment after a month of being on a leave of absence, and before the employer's proposed solutions in response to the claimant's concerns.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. 871 IAC 24.26(4). While a claimant does not have to specifically indicate or announce an intention to quit if her 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 she 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. v. Employment Appeal Board*, 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).(Emphasis added) 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." Here, the claimant was removed from the work conditions through her paid leave, and preemptively quit. Her resignation while on the leave of absence, and while the internal investigation was pending, precluded the employer to make adjustments which would alleviate the need to quit.

In addition, the credible evidence presented supports the claimant quit, not based upon the dancing video rumor, or specific conduct for which she encountered before her leave of absence in May 2017, but rather, based upon her interpretation of the employer's handling of welfare check call, in her absence, on June 13, 2017. The credible evidence presented is that the number of deputies dispatched to a call is affected by several variables, including guidance from a dispatcher, the responding deputy's request, fellow deputies voluntarily joining the responding deputy on the call, and details about the specific call itself.

The administrative law judge is not persuaded by the claimant's speculative conclusions that her review of the criminal complaint from the murder validates disparate treatment of her. As a practical matter, the claimant's assertion is hypothetical and speculative, as she was on leave and could not have responded to the call. Therefore, no credible evidence presented supports the claimant's assertion that had she been dispatched, she would have been sent to handle the welfare check-turned-double murder scene on her own. Even if the claimant's review of the call for which she was not assigned raised genuine concern, she could have brought it to the employer's attention, with the expectation she would go on future welfare check calls without a second deputy present. She failed to do so. Instead, the claimant waited approximately ten days and quit without notice. Based on the evidence presented, the administrative law judge concludes that the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

REMAND: The issue of whether the claimant is able and available for work effective August 20, 2017 (while currently under medical care) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The September 11, 2017, (reference 01) 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.

REMAND: The issue of whether the claimant is able and available for work effective August 20, 2017 (while currently under medical care) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

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