

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATHLEEN J LOWE
Claimant

3PL CORP
Employer

APPEAL 16A-UI-10925-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/03/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 4, 2016, (reference 04) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on October 27, 2016. The claimant participated personally. The employer participated through Shelley Hill, human resources director. Angie Muilenburg also testified for the employer. Employer exhibits 1 through 12 and claimant exhibit 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 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 an indexing specialist and was separated from employment on August 29, 2016, when she quit without notice. Continuing work was available.

The claimant began her employment in April 2016, and indicated early in her employment, she began having issues with her manager, Angie Muilenburg. While the claimant initially requested feedback about her job performance, she began receiving numerous emails identifying her errors. The claimant believed she was being singled out and unfairly targeted for her mistakes but acknowledged she did make mistakes, but so did her co-worker, also responsible for indexing. In the last weeks of employment, Ms. Muilenburg had special software installed that allowed her to pinpoint the user indexing work so she could verify which employee was making errors and address it with the appropriate training. The final incident occurred when the claimant received an email identifying mistakes on August 29, 2016. The claimant was not and had no reprimands for her job performance. The claimant went to human resources and tendered her resignation, effective immediately.

In addition, the claimant stated she felt uncomfortable with the gossip and negative comments made by Ms. Muilenburg. The claimant alleges the comments began the first week of employment. Prior to quitting, the claimant had not raised concerns with Ms. Hill, her manager directly, or upper management, (such as Brandon, who served as CFO and both Ms. Hill's and Ms. Muilenburg's manager) about Ms. Muilenburg's singling her out or gossip.

REASONING 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.

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.

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:

(27) The claimant left rather than perform the assigned work as instructed.

Iowa Admin. Code r. 871-24.25(33) 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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 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 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 that the claimant's manager, Angie Muilenburg, unfairly targeted the claimant by sending her emails identifying her errors. A manager has a right to communicate and address issues with employees as they see fit, and there was no indication that Ms. Muilenburg publicly shamed, or embarrassed the claimant or even used unprofessional language. The claimant may have disagreed with the frequency that she was making errors but the administrative law judge is not persuaded that Ms. Muilenburg's communications would lend rise to a hostile or detrimental work environment, but rather, a conflict of personalities.

Further, the administrative law judge is not persuaded the claimant quit due to gossip at the work place. Inasmuch as the claimant indicated the gossip began her first week of employment and she made no efforts to notify the employer of her discomfort, she gave the employer no opportunity to resolve any issues she was having. 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). Given the stale dates of the other complaints, they are not individually addressed as the claimant acquiesced to them by not raising concerns with her supervisor or quitting earlier when they arose.

Based on the evidence presented, the administrative law judge concludes that the claimant's decision to quit because she did not agree with the supervisor about various issues. 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 October 4, 2016, (reference 04) 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/rvs