

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICHARD L MACKEY
Claimant

BOMGAARS SUPPLY INC
Employer

APPEAL 16A-UI-07856-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/22/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 14, 2016, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 4, 2016. The claimant participated personally. The employer participated through TJ Blevins, distribution manager. 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 in truckload put-away beginning June 21, 2016 and was separated from employment on June 23, 2016, when he quit the employment. Continuing work was available.

The claimant applied for the job through a career fair, and was interviewed by TJ Blevins. During the short interview, the claimant was asked questions about his experience with scanners, warehouses and operating a forklift. He was hired shortly thereafter. The claimant accepted a position believing he was going to be a forklift operator. The employer reports there is no job title of forklift operator available to employees but rather the claimant was hired as a truckload put-away person. After the first day of work, the claimant determined he could not be physically moving and putting away equipment as required. He told the employer about his concerns and they transferred him, and report he accepted, a floor maintenance position. The claimant worked for one day in the position before quitting believing he was supposed to be performing work as a forklift operator.

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(12) and (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:

(12) The claimant left without notice during a mutually agreed upon trial period of employment.

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

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant voluntarily quit the employment without good cause attributable to the employer.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The credible evidence presented is that the claimant quit the employment because he disagreed with his job duties and title. The claimant reported he believed he had been hired as forklift operator. The employer has no such job but acknowledged the claimant was asked a question about forklift experience during the course of the short interview at the job fair. When the claimant made the employer aware that he was unable to do the job for which he was hired after one day of employment, he was offered and

accepted a second position in floor maintenance. The evidence presented does not support that the employer miscommunicated or misrepresented the claimant's position to him. Based on the evidence presented, the administrative law judge concludes 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 July 14, 2016, (reference 02) 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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs