

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLA M RUSS
Claimant

APPEAL 19A-UI-08119-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRECISION OF NEW HAMPTON INC
Employer

OC: 08/04/19
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the October 15, 2019 (reference 03) unemployment insurance decision that held claimant was eligible for unemployment insurance benefits due to her quitting work because of sexual harassment. The parties were properly notified about the hearing. A telephone hearing was held on November 6, 2019. Claimant, Kayla M. Russ, participated personally. Employer, Precision of New Hampton Inc., was represented by Attorney Laura Folkerts and participated through witnesses Lindsey Valentini, Dennis Hansen and Susan Underwood. The administrative law judge took official notice of the claimant's unemployment insurance benefits records, including the fact-finding documents.

ISSUES:

Did claimant voluntarily quit her employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time in sales from September 9, 2019 to October 4, 2019, when she voluntarily quit. The last day she physically worked there on the job was on September 27, 2019. Her job duties consisted of telephoning customers to sell torque convertors and preparing orders. Lindsey Valentini was her immediate supervisor. Dennis Hansen was an owner of the company. Dennis Hansen is Lindsey Valentini's father and there are many other relatives working at the company.

On September 27, 2019, Dennis Hansen came into the claimant's office and sat down next to her. He asked her how she was doing. Claimant told him that she thought she was doing pretty good but that she was not doing that great because she had not made any sales yet. He then responded to the claimant "you know you are going to be great because you are all in one

package” and then he started rubbing her thigh. He then told her that when she talked to people on the phone to act like they are her boyfriend and to make love to them that way they would want to hear from her when she called back. After that she turned her chair around and started working and put in the computer that she was going to a doctor’s appointment. Claimant then left work sick and did not return. Claimant did not report the incident to other persons in management or human resources. Claimant informed the employer that she was sick and not feeling well. She did not report to work the week of September 29, 2019 through October 4, 2019. The employer has a written anti-harassment policy. Claimant received a copy of the written policy. On October 4, 2019 claimant emailed Ms. Valentini that she was quitting her employment.

Claimant’s administrative records establish that she had received benefits of \$2,590.00 following her separation from this employer for five weeks between September 29, 2019 and November 2, 2019. The employer participated in the fact-finding interview through witnesses Lindsey Valentini and Susan Underwood.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp’t Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, the claimant voluntarily quit her employment. As such, claimant must prove that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). “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. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In the case at hand, the testimony of the witnesses is highly disputed. The decision in this case rests upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. 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.*

Ms. Valentini testified that her office is directly across the hall from the claimant's office and that on September 27, 2019, Mr. Hansen came into her office to ask how the claimant was doing. Ms. Valentini testified that she told Mr. Hansen that the claimant could use help with customers over the phone. Ms. Valentini testified that, for training purposes, Mr. Hansen told her to listen intently and watch through the window his conversation with the claimant.

The testimony of the employer's witnesses that Ms. Valentini was intently watching Mr. Hansen's conversation with claimant from a different office in order to "train" Ms. Valentini on managing employees is unreasonable. It is unlikely that a manager would have another manager watch from afar rather than simply having Ms. Valentini come into the claimant's office with Mr. Hansen if he intended to train Ms. Valentini on how to manage employees. Ms. Valentini admitted that she could not see a portion of the claimant because of claimant's desk. Further, the employer's witnesses provided inconsistent testimony about how far away Mr. Hansen was sitting from the claimant and the contents of the conversation he had with claimant.

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 that the claimant's version of events is more credible than that of the employer. The testimony of the claimant is more credible and given more weight because the testimony is reasonable and consistent with the other believable evidence in the record.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa

1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to her quitting.

It is reasonable to the average person they should not have to work with a supervisor who sexually harassed them. Claimant has credibly established that her working conditions were intolerable and detrimental. Thus, the separation was with good cause attributable to the employer. As such, benefits are allowed, provided the claimant is otherwise eligible. The claimant is not overpaid benefits due to her separation from this employer. The employer may be charged for benefits paid.

DECISION:

The October 15, 2019 (reference 03) unemployment insurance decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible. The employer’s account may be charged for benefits paid.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn