

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

GRETCHEN K EDSON
Claimant

APPEAL NO. 19A-UI-04417-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW SHACK TAVERN
Employer

OC: 05/05/19
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 22, 2019, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on May 6, 2019 for good cause attributable to the employer. After due notice was issued, a hearing was held on June 25, 2019. Claimant Gretchen Edson participated. Robert Smith represented the employer and presented additional testimony through Cathy Hansel. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert "Bobby" Smith owns and operates New Shack Tavern, a bar that serves food. The bar has two bar areas. Gretchen Edson was employed by New Shack Tavern as the full-time General Manager/bartender from March 2019 until May 6, 2019, when she voluntarily quit the employment. Ms. Edson's pay was \$650.00 per week plus tips. Tips from weekend shifts could be as much as \$300.00 to \$400.00.

About a month into the employment, Mr. Smith began making comments about Ms. Edson's body. Mr. Smith had provided Ms. Edson with clothes bearing the employer's logo to wear at work. Mr. Smith told Ms. Edson that her work clothes were too loose and that she needed to wear tighter clothing. Mr. Smith told Ms. Edson, "Your ass looks fat in those pants." Mr. Smith subsequently made comments to Ms. Edson about bar patrons liked to watch her perform a

particular bar task because it exposed her breasts. Ms. Edson asked Mr. Smith to stop making such comments, but the comments continued.

Ms. Edson decided to leave the employment on Monday, May 6, 2019, following events that transpired on May 4 through 6. On Saturday, May 4, 2019, Ms. Edson worked a particularly busy, difficult shift. On that day Ms. Edson and another bartender manned the employer's newly opened tiki bar. The third employee who was supposed to function as a barback or runner to keep the tiki bar stocked did not show for work. Ms. Edson was upset that Mr. Smith did not step in to help keep the bar stocked or make other arrangements. Later in the shift, Ms. Edson went to speak to Mr. Smith about the problems she had encountered that day. Ms. Edson found Mr. Smith sitting in the other bar with the bartender who was supposed to be restocking that bar. Mr. Smith had been consuming alcohol. Ms. Edson told Mr. Smith that she felt he had set her up to fail that day. Ms. Edson directed the other bartender to begin stocking bar shelves. Ms. Edson commented on the fact that Mr. Smith was smoking a cigar in an area was required by law to be a non-smoking area. The conversation became heated and ended with Mr. Smith telling Ms. Edson to "get the fuck off the property." There was further disagreement the following day over whether there was work for Ms. Edson that Sunday. Ms. Edson was upset about a lost opportunity to work on a day when the tips would be substantial. Mr. Smith took from an earlier conversation that Ms. Edson wanted to spend the day with her granddaughter.

On Monday, May 6, 2019, Ms. Edson reported to the workplace to facilitate a vendor's installation of a new cooler. When Ms. Edson reported for work on May 6, 2019, Mr. Smith told Ms. Edson that he was refusing to talk to her and that she needed to appear for a meeting the next day to talk about her future with the company. Ms. Edson elected instead to give notice via text message that she was quitting the employment.

REASONING AND CONCLUSIONS OF LAW:

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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.

Iowa Code section 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.

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). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Employees have a similar right to expect decency and civility from their employer.

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 Ct. 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.*

The evidence in the record establishes a voluntary quit for good cause attributable to the employer. Ms. Edson's testimony was more credible than the testimony of Mr. Smith and his additional witness, Cathy Hansel. The hearing record reflects the several instances in which Mr. Smith avoided providing a direct response to clearly worded questions. The weight of the evidence establishes that Ms. Hansel's testimony was colored by her status as Mr. Smith's employee. On the other hand, Ms. Edson consistently provided candid, direct responses. During the hearing, Mr. Smith displayed an attitude of entitlement and empowerment that a reasonable person would infer was also his approach to Ms. Edson's employment. The weight of the evidence in the record establishes that the employer repeatedly subjected Ms. Edson to offensive, demeaning, and sexually harassing language. The weight of the evidence establishes that such conduct was a pattern in the employment that created intolerable and detrimental working condition that would have prompted a reasonable person to leave the employment. Ms. Edson is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The May 22, 2019, reference 01, decision is affirmed. The claimant voluntarily quit the employment on May 6, 2019 for good cause attributable to the employer. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs