

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLAE M CHIPERI
Claimant

EXEL INC
Employer

APPEAL 20A-UI-13044-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (2R)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant, Nicolae M. Chiperi, filed an appeal from the October 12, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2020. The claimant participated personally. The employer, Excel Inc., did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. 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:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a picker and was separated from employment on November 14, 2019, when he quit the employment without notice.

Claimant quit based upon treatment of co-workers he had repeatedly experienced. He cited to examples of being called a “f---t” and “bitch”, being cursed at, and harassed. On one occasion when he went to management for his job assignment on overtime and asked what to do, his co-worker replied that he could perform oral sex on the manager. Claimant had made complaints to management, who would talk to the co-workers, but nothing changed.

On claimant’s final shift, he was trying to work and co-workers blocked his way to the bay, making it so he could not perform his job duties. Claimant then resigned.

Since January 2020, claimant has pursued obtaining his CDL and self-employment. He is currently self-employed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was with good cause attributable to the employer.

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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "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.*

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). 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."

An employee has the right to work in an environment free from unwanted vulgar and threatening language, lewd propositions, and insensitive and hurtful comments. The conduct the claimant was subjected to was severe and recurring. An employee also has the right to expect that management when notified about such conduct will take reasonable steps to end the harassment. Under the facts of this case, a reasonable person would conclude that the working conditions the claimant was subjected to were intolerable and were not effectively remedied at the point the claimant resigned. Claimant has established he quit for good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

The issue of whether the claimant is eligible for unemployment insurance benefits due to self-employment is remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The unemployment insurance decision dated October 12, 2020, (reference 01) is REVERSED. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of whether the claimant is eligible for unemployment insurance benefits due to self-employment is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
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December 30, 2020
Decision Dated and Mailed

jlb/mh