

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TODD A SHERIFF
Claimant

APPEAL NO. 21A-UI-04008-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TWELFTH MAN LLC
Employer

OC: 12/13/20
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Todd Sheriff, filed a timely appeal from the January 26, 2021, reference 01, decision that disqualified him for benefits and that held the employer's account would not be charged, based on the deputy's conclusion that the claimant voluntarily quit on November 20, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 1, 2021. The claimant participated. Rob Taylor represented the employer and presented additional testimony through Shea Braune and Chris Thompson.

ISSUES:

Whether the claimant voluntary quit without good cause attributable to the employer.
Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Todd Sheriff was employed by Twelfth Man, L.L.C., doing business as Northern Lights Pizza, as a delivery driver from August 2019 until November 20, 2020, when he voluntarily quit. Rob Taylor is the business owner. Chris Thompson is General Manager and was Mr. Sheriff's immediate supervisor. Shea Braune is another delivery driver and was Mr. Sheriff's coworker. At the start of the employment, Mr. Sheriff worked 32 to 35 hours per week. In the summer of 2020, Mr. Sheriff was absent for an extended period due to a non-work related medical issue. Upon his return to the employment, Mr. Sheriff worked 25 to 30 hours per week. His shift generally started at 4:00 or 5:00 p.m. and generally ended around 8:00 p.m.

On November 20, 2020, Mr. Sheriff arrived for work on time, went to the time clock to clock in, decided that Ms. Braune was standing too close to him, got angry, and "body checked" Ms. Braune as he moved by. Ms. Braune had been standing a few feet away at the pop machine. Through the body check, Mr. Sheriff pushed Ms. Braune into the machine. Mr. Sheriff advises that he served years in prison and that this impacts his sensitivity to maintaining personal space. Ms. Braune was not in Mr. Sheriff's personal space. Nor had she intentionally done anything to aggravate Mr. Sheriff. Mr. Taylor heard the commotion and summoned

Mr. Sheriff, Ms. Braune and Mr. Thompson to the back of the store to discuss what had just occurred.

During the November 20 discussion, Mr. Taylor referenced a November 13, 2020 incident in which Mr. Sheriff shoved Ms. Braune's pizza delivery bags to the far end of a counter because where Ms. Braune placed them did not suit him. When Ms. Braune said they were her bags and not to move them, Mr. Sheriff replied, "I'll do whatever the fuck I want." Mr. Taylor heard the utterance and intervened. Mr. Sheriff had previously alleged that Ms. Braune was bullying him. Mr. Taylor told Mr. Sheriff that it looked like Mr. Sheriff was bullying Ms. Braune, rather than Ms. Braune bullying Mr. Sheriff.

During the meeting on November 20, Mr. Taylor told Mr. Sheriff a week after the earlier incident, Mr. Sheriff was now on the verge of being charged with assault. Mr. Taylor said, "I'm done with this." Mr. Taylor then walked out and took the \$20.00 daily "bank" Mr. Thompson had issued to him for the shift. Mr. Taylor had been prepared to discharge Mr. Sheriff based on the inappropriate conduct, but Mr. Sheriff's departure made that unnecessary.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). 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).

Mr. Sheriff voluntarily quit and was not discharged. Mr. Sheriff's statement, "I'm done with this," coupled with walking off the job was sufficient to establish a voluntary quit through express intent and the overt act.

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.

Iowa Admin. Code r. 871-24.25(6), (21) 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:

- (6) The claimant left as a result of an inability to work with other employees.

- ...
- (21) The claimant left because of dissatisfaction with the work environment.
- ...
- (27) The claimant left rather than perform the assigned work as instructed.
- (28) The claimant left after being reprimanded.

On the other hand, quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(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).

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 weight of the evidence establishes a voluntary quit without good cause attributable to the employer. The weight of the evidence establishes that Mr. Sheriff's perception of matters is unreliable and colored by prison experience. Mr. Sheriff struggled with self-restraint and conditioned responses that might not be out of context in prison, but which were unacceptable, indeed harassing and assaultive, in the workplace. One example of this was Mr. Sheriff's outlandish statement that Ms. Braune was "trying to entice" him into a physical altercation. On the other hand, the employer's testimony was measured and reasonably consistent between witnesses. The evidence establishes that Mr. Sheriff voluntarily quit due to his dissatisfaction with the work environment, his inability to get along with his coworker, and in response to what was at that moment a verbal reprimand. Mr. Sheriff's sudden departure reflected a decision to separate from the employment, rather than perform the work in a civil manner as directed. Mr. Sheriff is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. He must meet all other eligibility requirements. The employer's account shall not be charged.

The administrative law judge notes the outcome in this case would have been the same if evidence had indicated a separation based on a discharge, as Mr. Sheriff's assaultive conduct on November 20, 2020 was misconduct in connection with the employment. See Iowa Code section 96.5(2)(a) and Iowa Admin. Code r. 871-24.32(1)(a).

DECISION:

The January 26, 2021, reference 01, decision is affirmed. The claimant voluntarily quit the employment on November 20, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. He must meet all other eligibility requirements. The employer's account shall not be charged.



James E. Timberland
Administrative Law Judge

April 5, 2021
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.