

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWN M BALAGNA
Claimant

UNION TANK CAR COMPANY
Employer

APPEAL 18A-UI-01299-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/14/17
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin Code chapter 25- Benefit payment control

STATEMENT OF THE CASE:

The claimant/appellant, Shawn M. Balagna, filed an appeal from the January 16, 2018, (reference 04) unemployment insurance decision that denied benefits based upon separation with this employer. A first hearing was scheduled with administrative law judge, Duane Golden, on February 21, 2018. The hearing was continued by the Agency to allow Workforce Program Coordinator, Mary Piagentini, an opportunity to participate.

The parties were properly notified about the second hearing. A telephone hearing was held on March 22, 2018. The claimant participated personally and through Matt Denning, attorney at law. The employer was represented by Lisa Neason, human resources manager. Doug Pabst, plant manager, also testified. Workforce Program Coordinator, Mary Piagentini, participated. Claimant Exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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.

ISSUES:

Did the claimant voluntarily quit the employment from Union Tank Car Company with good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of May 14, 2017. The claimant filed his claim in response to his separation at Krieger Motor. The claimant filed for and received a total of \$9,416.00 in unemployment insurance benefits for the weeks between June 25, 2017 and November 25, 2017.

Based upon the US Department of Labor guidelines, claims are selected at random for audits, and the claimant participated in an interview with Mary Piagentini, then Quality Control Program Manager. As a result of information provided by the claimant at the interview, an additional

investigation was performed regarding the claimant's separation with this employer, Union Tank Car Company.

The claimant was employed from June 25 through June 27, 2017, as a full time painter, until he quit his employment without notice. Continuing work was available. Prior to his first day of work, the claimant had not toured the painter's booth where he and two co-workers painted rail cars. On the claimant's first day of work in the painter's booth, he discovered the floors to be littered with trash and debris, which caused him to almost trip. He also indicated the lighting in the booth was very poor because the fixtures were covered in paint.

Later that day, while at break with his two co-workers, the claimant observed conversations where his co-workers openly spoke about engaging in oral sex with female co-workers, as well as non-employees, as well as an office employee being employed because she was "eye candy" and looked good. When a lead worker walked into the conversation, he also began engaging in similar talk, including disrespectful and vulgar comments about women.

The claimant was alarmed by both the working conditions and conversations he encountered during his first day of work, and called the plant manager, Doug Papst, where he left a voicemail, notating his concerns and requesting to discuss them further. He did not receive a call back so he made a second attempt and spoke with Mr. Papst. According to the claimant, he told Mr. Papst about his prior day of employment, who responded with something to the effect of "what do you want me to do about it?" and suggesting that the work environment would not be changing. Mr. Papst attended the hearing and denied that he received a voicemail, or had any conversation with the claimant. The claimant subsequently quit after determining he was uncomfortable in the workplace and with no action being taken.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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. 871-24.26(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.

Iowa Admin. Code r. 871-24.26(2) 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:

(2) The claimant left due to unsafe working conditions.

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

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).

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.* After assessing the credibility of the claimant who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes claimant has met his burden of proof to establish he quit for good cause reasons within Iowa law.

While a claimant does not have to specifically indicate or announce an intention to quit if his 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 he 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 sexual language, and unsafe work conditions. Upon encountering concerns related to tripping in the workplace due to excessive debris and poor lighting, as well as observing employees, including a lead worker, engage in vulgar, unprofessional language, the claimant immediately made the employer aware of his concerns. The claimant notified the plant manager, and testified with

specificity, to the conversation he had with Mr. Pabst, who responded, “what do you want me to do about it” and suggested that was the work environment. The administrative law judge compared the specific, detailed testimony to the employer’s straight denial of all contact with the claimant, and found the claimant’s testimony to be more credible. An employee also has the right to expect that management when notified about such conduct will take reasonable steps to end it. 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, and the claimant had no reasonable expectation that they would be remedied, based upon Mr. Pabst’s response when notified. Thus, the claimant has established good cause reasons for leaving the employment. Benefits are allowed.

DECISION:

The January 16, 2018, (reference 04) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn