

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SHANE A GRAMBLIN
Claimant

APPEAL NO: 19A-UI-03891-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TERMINAL SOLUTIONS LLC
Employer

**OC: 04/14/19
Claimant: Appellant(1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Shane A. Gramblin, filed an appeal from the May 6, 2019, (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation from benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 5, 2019. The claimant participated personally and was represented by Nathaniel Staudt, attorney at law. The employer participated through Travis Remsburg, owner. Brandy Eilbeck attended as an observer.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibits 1-3 were admitted into evidence. 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:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

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 shop attendant and was separated from employment on April 18, 2019, when he quit the employment. The claimant stated he quit due to ongoing abusive treatment and use of profanity by his manager/owner, Mr. Remsburg. The claimant last performed work on April 9, 2019. Continuing work was available.

The claimant incurred a shoulder injury in 2018 and stated his manager began treating him differently thereafter. The claimant opined he was treated like a child but after a couple months, conditions improved.

On February 17, 2019, the claimant asked the employer for a raise (Claimant Exhibit 2). On February 26, 2019, the claimant sent Mr. Remsburg a text message stating he had contacted the office manager about a raise (Claimant Exhibit 2). When the claimant did not receive the anticipated raise, he followed up via text message on March 12, 2019:

You know I work my ass off to keep this place clean and keep everything organized and keep everything stocked and to keep everything billed keep track of everybody and it really upsets me that you told me I was going to get a raise and then I'm not explanation would be nice at least sorry just ain't had time to talk to you alone I guess (Claimant Exhibit 2).

On March 20, 2019, the claimant sent Mr. Remsburg another text message:

Just a little heads up think its time for me to move on I'd like to leave on good terms so I could use you as a reference that would be nice but I this this is my notice I'm going to look for another job (Claimant Exhibit 2).

When Mr. Remsburg did not reply, the claimant followed up the next day by sending a message to Mr. Remsburg saying, "So I guess that means ya don't give a shit, nice to feel needed" (Claimant Exhibit 2).

On March 28, 2019, the claimant alerted Mr. Remsburg late at night that he injured his shoulder again and believed it was work related (Claimant Exhibit 2). He was advised to fill out an incident report (Claimant Exhibit 2). The claimant continued to text message Mr. Remsburg between 1:00 and 2:00 a.m., to which Mr. Remsburg questioned why the claimant was reporting it at 2:00 a.m. and asked to continue the conversation in the morning (Claimant Exhibit 2). The claimant was not at the shop at 7:00 a.m. the next day to meet with Mr. Remsburg. He asked the claimant to send the injury report to him directly since the office manager was out (Claimant Exhibit 2). The claimant responded by saying, "It's really too bad you got to treat me like a piece of s*** you know it (Claimant Exhibit 2).

The claimant visited the doctor and was placed on light duty. He remained on light duty for his shifts until April 9, 2019. The claimant opined Mr. Remsburg yelled at him, was abusive and tried to embarrass him while he was on light duty. Specifically, he said that Mr. Remsburg told the claimant in front of other co-workers, "You get your fucking ass in there and sort bolts...there's your fucking light duty." Mr. Remsburg did not recall the conversation. The claimant challenged having to sort bolts on April 2, 2019 and Mr. Remsburg responded "sortem" (Claimant Exhibit 2).

On April 5, 2019, the claimant sent an email to employer's timekeeping email which was accessed by Mr. Remsburg and his office manager (Claimant Exhibit 1). The claimant explained how he spent his time on April 4, 2019, followed by several comments including:

I have been trying to show ya I can be valuable to have and telling ya I need more money last time I hit ya up...

...then I tell ya I'm gonna start looking for new job no response.. thought maybe you would come talk then but nothing...

...and just saying feel little un appreciated and sorry for whatever the fuck happened. I am just trying to communicate without the yelling and not getting a chance to speak. (Claimant Exhibit 1).

On April 8, 2019, the claimant was upset with Mr. Remsburg again and said via text message, "I'd like to communicate through text so it's all documented on how much of an a***** you are to me..." (Claimant Exhibit 2). On April 9, 2019, the claimant did not go to the shop to perform light duty as he had been assigned. When Mr. Remsburg discovered the claimant had gone to the fish farm, alone, he went to the site and confronted the claimant. He told the claimant he was supposed to be at the shop and that Mr. Remsburg did not want the claimant to be at the same location that he had reportedly hurt his shoulder. The claimant and Mr. Remsburg both

used raised voices. The claimant called Mr. Remsburg an “asshole” and told him he was going to talk to his lawyer. Mr. Remsburg responded sarcastically, “tell them I said hi.” The claimant then went on vacation to Las Vegas. When he returned, he met with his attorney and submitted his resignation letter after the meeting.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant’s separation from the employment was without good cause attributable to the employer.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Admin. Code r. 871-24.25(22) 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:

(22) The claimant left because of a personality conflict with the supervisor.

The claimant has the burden of proof to establish he 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. 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 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 the weight of the evidence in the record establishes claimant has not met his burden of proof to establish he quit for good cause reasons within Iowa law.

In this case, the claimant stated he quit due to ongoing abusive treatment and language by his manager. The claimant opined that his shoulder injury and worker's compensation claim triggered Mr. Remsburg to treat him poorly to the extent he could not continue working. He alleged that Mr. Remsburg would yell at him, use profanity, belittle him and abuse him.

The administrative law judge does not condone the use of profanity in the workplace, but recognizes many workplaces are lenient in its expectation of acceptable language. In this case, both parties used profanity with each other. Based on the evidence presented, the administrative law judge is not persuaded the conversations, words used or conditions between the claimant and Mr. Remsburg ever escalated to a point that would be deemed harassment or a hostile work environment, but rather due to personality conflict.

In February 2019, the claimant became disgruntled with the fact he was not going to get an expected raise. He peppered Mr. Remsburg with text messages about the fact he didn't think it was fair, and when Mr. Remsburg did not engage back, the claimant became more agitated by way of his messages. The claimant clearly felt undervalued, and perhaps deservedly so. However, his communications with Mr. Remsburg continued to escalate by way of profanity laced messages, threatening to quit, peppering Mr. Remsburg with text messages into the early hours of morning, and even demanding communications be in writing so he could document what an "a*****" Mr. Remsburg was to him.

The heated argument between the parties on April 9, 2019 was not professional. However, it cannot be ignored that the claimant's conduct was combative and antagonistic by way of calling his manager an "asshole" as he threatened to obtain counsel because he was mad at Mr. Remsburg. The administrative law judge is not persuaded a reasonable person would not quit under these circumstances. Based on the evidence presented, the claimant may have had personally compelling reasons for quitting the employment but has failed to sustain his burden of proof that he quit with good cause attributable to the employer according to Iowa law. Benefits are denied.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The May 6, 2019, (reference 01) decision is affirmed. The claimant quit the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn