

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIRYAN RODRIGUEZ ZAPATA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 18A-UI-10666-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/30/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 17, 2018, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on November 21, 2018. Claimant participated and testified with the assistance of a Spanish language interpreter from CTS Language Link. The employer's representative was not available at the telephone number provided and therefore did not participate. Claimant's Exhibits A through C were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 1, 2011. Claimant last worked as a full-time accountant. Claimant was separated from employment on October 1, 2018, when she voluntarily quit.

Claimant's job duties consisted of processing payments for the employer's drivers. The paperwork needed to process these payments was in another building. There was active construction going on in the area between that building and claimant's. (Exhibits A through C). The construction made claimant nervous, as there were cranes, large machinery, and objects she was afraid she might trip over. Claimant had been instructed to only make one trip, at the beginning of her shift, to the other building and that the remainder of the time the paperwork should be faxed to her. She was given the directive that if the fax machines were down it was the responsibility of the employees in the other building to get the paperwork to her. Claimant testified the fax machine was often down and the other employees did not always bring the paperwork to her. In these circumstances, claimant took it upon herself to go get the paperwork, sometimes every 15 to 20 minutes. No one gave claimant this directive or

threatened disciplinary action if she did not retrieve the paperwork. Because claimant was uncomfortable regularly walking through the construction zone, she resigned her employment.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

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 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:

(27) The claimant left rather than perform the assigned work as instructed.

Iowa Admin. Code r. 871-24.26 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.

...

(4) The claimant left due to intolerable or detrimental working conditions.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant voluntarily resigned because she was uncomfortable walking through a construction area multiple times per day to retrieve paperwork necessary to complete her work. Claimant

was concerned because there were cranes nearby moving things and debris on the ground she was afraid she would trip over. Claimant was specifically told by the employer that she was not to be traveling through the construction zone, except once at the beginning of her shift, and offered several alternatives for getting the documents she needed. Claimant, however, took it upon herself to go to the other building multiple times per day when the fax machines were down and employees from the other building had not brought her the paperwork she needed. For these reasons, claimant has failed to meet her burden in showing the employer created a work environment that was unsafe or otherwise intolerable. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The October 17, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/scn