

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EILEEN G DENAHY
Claimant

HY-VEE INC
Employer

APPEAL 15A-UI-10383-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 10, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 7, 2015. Claimant participated. Employer participated through floral manager, Shelly Routh, human resources manager, Andrea Ahmann, store manager, Tony Fuhrmeister, and hearing representative, James Tranfaglia. Claimant Exhibit A was admitted into evidence without objection. Employer Exhibit One was admitted into evidence without objection.

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 was employed full time as a floral designer from January 31, 2015, and was separated from employment on August 21, 2015, when she quit.

On August 21, 2015, claimant was arguing with Ms. Routh about two other employees Ms. Routh was writing up. One of the co-workers was claimant's friend. Claimant told Ms. Routh that if her friend gets written up, then she was going to quit. Ms. Routh told claimant that was her friend's choice. Claimant then complained that the other employee getting written up was just a troublemaker. Ms. Routh then told claimant that she had a write up for claimant because of claimant's attitude. Ms. Routh already had the write up for claimant written, and claimant started arguing with her before she had a chance to tell claimant about the write up. When Ms. Routh told claimant she was getting a write up, claimant told Ms. Routh she was going to quit. Ms. Routh considered claimant's verbal quit her resignation. Ms. Routh accepted claimant's resignation on behalf of the employer. Ms. Routh never got a chance to talk to claimant about her write up. After claimant told Ms. Routh she was going to quit, she got her tools and left. Claimant did not give any reason why she was going to quit. Ms. Routh never told claimant she was going to be discharged. The employer was not going to discharge claimant because of the write up.

Claimant testified there was a toxic work environment at the employer. Ms. Routh testified that the toxic environment was around claimant. Four employees complained that were tired of claimant's bad attitude and her complaining all of the time. These employees were in the floral department. The four employees spoke with Ms. Routh about claimant's attitude. The employer allows employees to speak to Ms. Ahmann or Mr. Fuhrmeister if they have a complaint that is either not addressed by their manager or is about their manager. There was work available for claimant had she not quit.

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. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits submitted by both parties. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code § 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(18), (21), (22), (28) and (37) provide:

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 § 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 § 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:

- (18) The claimant left because of a dislike of the shift worked.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (28) The claimant left after being reprimanded.
- (37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. On August 21, 2015, claimant told her direct supervisor, Ms. Routh, that she quit. Claimant did not give a reason why she was quitting. Claimant had just been arguing with Ms. Routh about her friend getting a write-up by Ms. Routh. Claimant did not quit because her friend was getting a write up; however, claimant did quit after Ms. Routh told her she was getting a write up. Claimant testified she did not quit because she was getting written up, yet she quit immediately after being told she was getting written up. Ms. Routh accepted claimant's resignation on behalf of the employer.

Claimant's argument that the work environment was toxic is not persuasive. Claimant has the burden of proving her quit was for good cause attributable to the employer. Claimant failed to satisfy her burden. Ms. Routh testified that she had received complaints about claimant's attitude from multiple employees. Ms. Routh had prepared a write up for claimant, but did not have a chance to give it to her before she quit. Claimant's also argued that Ms. Routh would not let her order flowers that were out of stock for a customer, Ms. Routh would hang up on customers, and other decisions made by Ms. Routh. Ms. Routh was claimant's supervisor and had the authority to decide whether claimant could order out-of-stock flowers. Claimant did not like Ms. Routh's decisions and the way Ms. Routh treated customers; however, claimant did not report any of her complaints to the employer. During orientation, the employer discussed with claimant that she could report complaints to Ms. Ahmann or the store manager.

Claimant's decision to quit because she did not agree with the supervisor about various issues was not for a good-cause reason attributable to the employer. It is also not a good-cause reason attributable to the employer to quit when being reprimanded or going to be reprimanded. While claimant's leaving the employment 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 must be denied.

DECISION:

The September 10, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css