

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHERI SHEEHAN
Claimant

DUBUQUE CHILDCARE CENTER LLC
Employer

APPEAL 20A-UI-13399-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 21, 2020, reference 01, decision that disqualified her for unemployment insurance benefits because she quit without good cause attributable to her employer. After due notice was issued, a hearing was held on December 23, 2020. The claimant participated personally and her husband, Robert Sheehan, testified in favor of her claim. The administrative law judge took judicial notice of the administrative record. Exhibits 1, 2, 3, 4, and A were admitted into the record.

ISSUE:

Whether claimant's quit was for 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 worked the term of employment at issue in this case as a full-time assistant teacher for the employer, Dubuque Childcare Center LLC, from November 1, 2016 to August 4, 2020, when she left the employer. Her immediate supervisor was MacKenzie Sertle.

The employer has a chain of command and there are employee complaint forms in the office. The employer informs staff about these forms at staff meetings.

On August 4, 2020, at 10:30 a.m., a coworker, Hailey Runde, said that she had received a one dollar raise. The claimant proceeded to ask Loni Klass. Ms. Klass assured the claimant that Ms. Runde had not received a one dollar raise. Around 11:15 a.m., Ms. Runde said again that she received a one dollar raise. The claimant insisted on seeing Ms. Runde's pay stub. As claimant was walking through the doorway, Room Lead Grace Jackson grabbed the claimant's arm and would not let go. Ms. Jackson told the claimant the raises were "no one's business." The claimant tried get back into the employer's business and Ms. Jackson attempted to bar her entry with an arm. The claimant flung Ms. Jackson's arm out of the way. As the claimant passed Ms. Jackson coming back into the building, Ms. Jackson said, "You need to be on ratio, this is your job and you are needed outside."

On August 14, 2020, the claimant wrote an email to Melanie Ricke stating she was filing assault charges against Ms. Jackson because of what occurred on August 4, 2020.

The employer provided statements written by Ms. Klass (Exhibit 2), Ms. Jackson (Exhibit 1), Ms. Schaltz (Exhibit 3), Ms. Runde (Exhibit 4). The claimant provided a statement written by Ms. Schaltz. (Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

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 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

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).

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). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Administrative Code rule 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa*

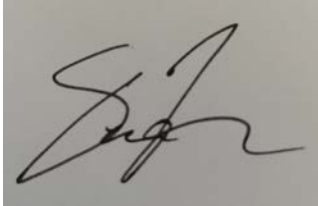
Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005). Quits due to unsafe working conditions are deemed to be for good cause attributable to the employment. See Iowa Administrative Code rule 871-24.26(4).

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 claimant left on August 4, 2020 without telling anyone at the employer when or if she would return until almost 10 days later. On August 4, 2020, the claimant said many things regarding her dissatisfaction with what she perceived to be unequal distribution of pay raises. The statements and her leaving constitute an overt action signaling she was quitting. The claimant claims Ms. Jackson left a bruise on her arm which caused her work to be intolerable enough to quit. The administrative law judge does not believe the claimant's description of the event or the resulting bruise because none of the other employees describe a similar set of events. Other workers corroborate Ms. Jackson's description, in which she says she attempted to prevent the claimant from entering and her arm was flung out of the way by the claimant. Even if the claimant had received a bruise, a quarter sized bruise would not cause a reasonable employee to quit. The claimant's reason was dissatisfaction with what she perceived to be unequal increases in wages. 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 21, 2020, reference 01, unemployment insurance decision is affirmed. Benefits are allowed. The employer's account will be charged.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to be 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 11, 2021
Decision Dated and Mailed

smn/scn