

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT E SKINNER
Claimant

ADAM FISHER LLC
Employer

APPEAL 16A-UI-11479-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/02/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 17, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on November 10, 2016. The claimant participated personally. The employer participated through Adam Fisher, owner. Claimant exhibits A through F were received 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.

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 driver and was separated from employment on October 3, 2016 when he quit the employment without notice.

September 16, 2016 at the end of his shift, the claimant declared he was taking vacation the following week. Mr. Fisher informed him he could not have the entire week off, so the claimant worked eleven hours on Friday, September 23, 2016. On Friday, the employer observed the claimant had an “attitude” about him, and Mr. Fisher confronted him, asking if he intended to quit the employment. The claimant responded “did I say that?” and then indicated he would be at work the following Monday. However, the claimant became ill and began text messaging his manager each day with updates on September 26, 27 and 28, 2016 (Claimant exhibit D). Mr. Fisher was concerned in light of the claimant’s prior behavior and him not showing up, and called the claimant each day. The claimant acknowledged seeing the phone calls but did not return any, saying he was sick. On Friday, September 30, 2016, Mr. Fisher responded to the claimant’s text message and requested he call him.

The claimant never called but showed up to work on October 3, 2016. The claimant expected he would be permitted to collect wages for his four days of vacation during the week ending September 23, 2016 and also collect three days of vacation to offset his five days of absence during the week of September 26 to 30, 2016. The employer reported the claimant had cleaned out his truck and removed his hardhat that morning, and then approached Mr. Fisher in the yard on October 3, 2016, demanding his pay for the past two weeks. Since the claimant had called off Friday, he was unavailable to receive it. The claimant then informed Mr. Fisher he expected his last two weeks to reflect his seven days of vacation. Mr. Fisher denied the claimant's request for vacation and did not customarily draft checks on demand from employees. Following a brief exchange, the two parted ways and the claimant left without performing work, and without being discharged by Mr. Fisher.

The employer has no written policies for its employees regarding attendance, notification of absences or vacation pay. The evidence is disputed if Mr. Fisher had agreed to let the claimant to take seven days of vacation, paid versus unpaid, and there were no clear procedures established regarding how the claimant would request vacation time and accommodating pay.

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 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(22) and (27) 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.

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

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. "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 fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

The administrative law judge is not persuaded the employer had promised the claimant to be paid vacation any time he was absent or in response to calling off as sick during the week of September 26, 2016, or that the employer did not pay vacation or wages owed to him. Rather, the credible evidence is the claimant repeatedly called off work, and was unresponsive to phone calls by the employer, during the week. When he returned to work, he demanded a paycheck and pay for time he had missed due to being sick, which was denied by the employer. Because the claimant had already cleaned out his vehicle, prior to the confrontation with Mr. Fisher, the administrative law judge is not persuaded Mr. Fisher's response to the claimant's demand would have affected his decision to initiate separation. The credible evidence presented supports the claimant quit based on his relationship or personality conflict with Mr. Fisher, most recently because of a dispute in vacation pay, which he was never guaranteed. Based on the evidence presented, the administrative law judge concludes the claimant's leaving the employment may have been based upon good personal reasons, but he has failed to establish it was for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The October 17, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left 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/pjs