

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRITTANY C MCBRIDE
Claimant

HUNAN KING/ LAM M TRAN
Employer

APPEAL 16R-UI-09320-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/12/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 1, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. A hearing was scheduled for July 25, 2016 but not conducted when the claimant/appellant failed to appear. The claimant filed an appeal to reopen the record and the Employment Appeal Board remanded the matter for a new hearing, finding the claimant had demonstrated good cause for missing the first hearing. The parties were properly notified about the second hearing. A telephone hearing was held on September 16, 2016. The claimant participated personally. The employer did not participate in the hearing as no number was registered by the employer with the Appeals Bureau. The claimant exhibit A was 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 part-time as a delivery person and was separated from employment on June 14, 2016, when she quit the employment, stating she felt “pushed out.”

The claimant and her co-worker, Kaitlyn Jones, were friends for several years outside of work. Then around June 5, 2016, the claimant questioned Ms. Jones, whose home was used for childcare for the claimant’s family, if her husband was using drugs, based on his recent behavior. After that, the claimant’s relationship with Ms. Jones changed as Ms. Jones did not want to work with her. On June 12, 2016, the claimant was running late for her shift to be a delivery person and notified Ms. Jones, who was working the front counter. When the claimant arrived, an argument ensued, in the presence of customers, regarding whether the claimant

could handle a delivery order that was ready. Ms. Jones told the claimant she was not delivering the order, and the claimant went to reach for the ticket order and Ms. Jones made contact with the claimant's wrist and pushed her away from the ticket. The argument escalated to the claimant telling Ms. Jones to taking her "damn hands" off her, and raising her voice. This was observed by other customers, and Ms. Jones called mall security to intervene.

The evidence is disputed as to whether the claimant continued to participate in the argument as the employer indicated the claimant was yelling and was asked to stop by both mall security and a customer. The claimant asserted she was not asked to leave but voluntarily left stating she was not going to do deliveries that day. The following day, she was confronted by her manager, Lam Tran, about the incident at hand. The claimant insisted on consequences for Ms. Jones because she touched the claimant's wrist when they argued over the ticket. Ms. Tran told the claimant that she or Ms. Jones needed to leave and asked the claimant to plead her case for staying employment. The claimant did not want to have to work with Ms. Jones anymore or plead her case so she voluntarily quit, and confirmed so in text messages with Mr. Tran's wife, Melody. Separation then ensued, effective June 14, 2016.

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(6), (27) and (37) 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:

(6) The claimant left as a result of an inability to work with other employees.

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

(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.

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 conversation, words used or conditions between the claimant and her co-worker, Kaitlyn Jones, were ever escalated to a point that would be deemed harassment or a hostile work environment, but rather due to personality conflict. Cognizant that Ms. Jones pushed the claimant's wrist away from the order ticket when they both tried to reach for it, the administrative law judge is not persuaded that it rises to the level of a physical altercation or "laying hands on" as the claimant alleged. Rather, the claimant engaged in a public confrontation with Ms. Jones that escalated to a point that customers observed and mall security had to intervene. Further, the evidence presented supports the claimant was given an opportunity to remain employed after the confrontation, inasmuch as Mr. Tran asked the claimant to justify why she should stay and the claimant chose not to, but rather quit on her own accord. While the claimant's leaving the employment may have been based upon good personal reasons, the claimant's decision to quit because she could not get along with her co-worker, Kaitlyn Jones, was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

In the alternative, if the claimant's separation was categorized as a discharge, rather than voluntary quit, the claimant would remain disqualified.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Based on the evidence presented, the claimant's actions of yelling and arguing with a co-worker, including the use of profanity, in the presence of customers, and which required mall security to remove her were contrary to the best interests of the employer. Whether categorized as a quit or discharge, the claimant should be disqualified from receiving benefits.

DECISION:

The July 1, 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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs