

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JESSICA LETVIN**  
Claimant

**LIFEPOINT DENTAL GROUP LLC**  
Employer

**APPEAL 16A-UI-09038-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/31/16  
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 16, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2016. The claimant Jessica Letvin participated and testified. The employer Lifepoint Dental Group LLC participated through Vice President Sandy Crock. Witness Trina Bittner testified on behalf of the employer. Claimant's Exhibits A through E and employer's Exhibits 1 through 9 were received into evidence.

**ISSUES:**

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

Has the claimant been overpaid unemployment insurance benefits?

Can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a financial coordinator from April 1, 2013, until this employment ended on August 2, 2016, when she voluntarily quit.

Over the course of her employment claimant had ongoing issues with another employee, Tamara. Claimant testified Tamara was her coworker, but would regularly try to act as her supervisor by attempting to exercise authority and control over her work. According to claimant Tamara would criticize her work, call her lazy, and make comments like, "What the hell are you doing, pull your head out of your ass." Tamara was never physical or threatening towards claimant and did not engage in profane name calling. Claimant submitted a statement from

former employee, Peggy Lemley, in support of these allegations. (Exhibit B). Financial Coordinator Trina Bittner testified she worked with both claimant and Tamara. Bittner testified both claimant and Tamara were hot tempered and sometimes did not get along. Bittner did not witness any behavior she would consider harassment or bullying by either individual. Bittner testified all three of them would sometimes swear out of frustration, but it was never profanity specifically directed at anyone.

Claimant spoke with Crock about the situation between her and Tamara on several occasions, but felt her complaints were not taken seriously because Tamara was Crock's mother. Claimant testified Crock would just tell her to try to avoid Tamara. Crock testified she was aware of the issues between Tamara and claimant, but felt that the issues went both ways. According to Crock, the two generally got along, but both had a tendency to take things very personally, which sometimes led to conflict. Crock admitted she advised claimant to avoid Tamara, but testified she gave Tamara the same advice. Crock denied ever receiving any complaints of profanity being used.

In June 2016, Crock was promoted, though she continued to supervise claimant and Tamara. On August 2, 2016, a new supervisor began working in Crock's former position. Claimant saw this as a new opportunity and was hopeful things with Tamara would change once Crock was no longer their supervisor. Approximately 45 minutes into the work day the phone rang. Neither Tamara nor Bittner would stop their work to answer the phone. Finally Tamara said to claimant, "Will you either answer the phone or do this audit?" This comment led claimant to conclude nothing was going to change and Tamara would continue to display a negative attitude towards her. Claimant then got up and left work without notifying anyone. When claimant got home she sent an email to Crock and President Aaron Blass informing them she was resigning effective immediately. The claimant filed a new claim for unemployment insurance benefits with an effective date of July 31, 2016, but testified she has not received any benefits to date.

## **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:

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

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:

(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).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

It is clear that claimant and her coworker, Tamara, did not get along. Claimant does not allege any threats, physical abuse, or profane name-calling. While both parties testified about profanity in the workplace, the evidence suggests it was used by all members of the team, including claimant. The final event leading to claimant's resignation, while frustrating to her, was relatively minor and not indicative of an intolerable work environment. Claimant has failed to meet her burden in showing that her coworker's behavior was so offensive or abusive as to amount to an intolerable working environment. 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. Because claimant has not received any benefits to date to issues involving the overpayment and repayment of benefits are moot.

**DECISION:**

The August 16, 2016, (reference 01) unemployment insurance decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she is deemed eligible. The issues of overpayment and repayment are moot.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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