

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALEXUS BROWN

Claimant

APPEAL NO. 21A-UI-01136-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOOT LOCKER RETAIL INC

Employer

OC: 08/23/20

Claimant: Appellant (2)

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 8, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 16, 2021. Claimant participated. Employer participated by hearing Amelia Gallagher and witness Anthony Visinaiz. Claimant's exhibits A-B were admitted into evidence.

ISSUES:

Whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a full time assistant manager for employer. Claimant last worked for employer on August 28, 2020. Claimant voluntarily quit after that date as she stated she repeatedly raised concerns about treatment she received from the store manager and employer did nothing to address claimant's concerns.

Claimant stated that she was often berated by her manager and called stupid and an idiot. In addition, claimant stated that her manager acted in an inappropriate manner when claimant had a feminine accident while at work. This alleged incident occurred on or around August 1, 2020.

Claimant stated that she'd repeatedly complained to employer about the store manager and how she was treated. In mid-August 2020, claimant stated she had a phone call with herself, another assistant manager, the store manager and the district manager. Claimant said she was crying as she told of the treatment she received from the store manager. She told how she would be insulted and called names about the way she set up tables for products and the way she folded items. Claimant was also insulted that her manager created a written document stating that claimant was doing a poor job at work. Employer left this piece of paper out in the open where employees could easily see it.

Claimant was never written up for allegedly improper following of procedures. At the time of her quit, claimant did have ongoing work available.

Employer stated that claimant never complained of the treatment she'd received by her manager, although employer stated after he received the resignation letter, he contacted claimant and she reiterated that she had difficulties with the store manager.

Employer chose not to have the store manager testify at the hearing although he is still employed. Employer's witness stated he had not been to the store to witness interactions between the parties.

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.

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand witnesses, the administrative law judge concludes that the employer kept the only person who could directly refute the allegations of the claimant from testifying because his testimony would be hazardous to employer's case.

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because the store manger was consistently acting in an inappropriate, rude and insulting manner to claimant. Claimant attempted to arrange a teleconference with employer about her manager's actions, but nothing was done after the conference, and the manager continued to treat claimant rudely.

Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.* Here claimant had to endure insults from a manager over an extended period of time. Going to higher management did not yield results. Claimant's quit was with good cause attributable to employer. Benefits allowed.

DECISION:

The decision of the representative dated December 8, 2020, reference 01 is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

February 26, 2021
Decision Dated and Mailed

bab/kmj