

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MOLLY CAMARIGG
Claimant

SIOUX CITY HEALTHCARE LLC
Employer

APPEAL 17A-UI-00182-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/11/16
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 28, 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 January 26, 2017. The claimant participated personally and was represented by R. Scott Rhinehart, Attorney at Law. The employer did not register for the hearing and did not participate. 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 registered nurse/charge nurse and was separated from employment on September 30, 2016, when she resigned. Continuing work was available.

The claimant tendered her written resignation after her shift on September 16, 2016. As a charge nurse, the claimant had supervisory duties, in addition to tending to the patients. The claimant volunteered to work an extra shift on September 16, 2016 outside of her usual schedule, to help the employer.

When the claimant arrived to the shift, she learned there were only three nurses for the four halls, and usually there is a nurse assigned to each hallway, which would consist of 20 to 22 patients. On this day, however, the claimant was assigned two hallways plus her charge nurse duties. The claimant began reporting her concerns to the employer by way of her DON and administrator, at approximately 10:30 a.m. She also made the employer aware that they would be short staffed at 2:00 p.m. when she left. During the shift, she reported to the employer three times her concerns and each time was told “we’re working on it.” At the end of the shift, the claimant’s DON approached her and asked her the latest she could work since they were not

adequately staffed. The claimant stated the latest she could work was 4:00 due to a prior engagement with her child. It is prohibited to leave a medical facility without adequate coverage, and had the claimant done so, she could have been personally disciplined, as well as the employer could have faced consequences. At 4:30 p.m. the claimant's replacement still had not arrived, and she ultimately left at 5:00 p.m.

Later that night, around 10:30 p.m. the claimant received a call from an administrator telling her that she had not completed the required narcotic record. Because of the nature of narcotics, employees had to document administration in both the usual MAR (medication administration record) and a narcotics log. In the call, the claimant was informed if she did not return to the employer premises by midnight to sign the log, that the police would be called on her and the employer would report her to nursing board for the state of Iowa. The claimant acknowledged she had forgotten to sign off but that historically, when this happened, a note would be left and employees were not called at home or threatened. As a result of the short staffing not being addressed, the claimant's concerns and the call, she tendered her resignation when she returned that evening to sign the narcotics log.

The employer did not attend the hearing and did not provide any written documentation in lieu of participation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from the employment was with 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. 871-24.26(2) 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:

(2) The claimant left due to unsafe working conditions.

Iowa Admin. Code r. 871-24.26(4) 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.

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). In the case of a resignation because of suspected illegal or unethical corporate behavior, the proper inquiry is whether a person of reasonable prudence would, in like circumstances, believe that improper or illegal activities were occurring at the place of work and that these activities necessitated the individual's quitting. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 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 establishes illegal, intolerable and/or detrimental working conditions that would cause a reasonable person to quit the employment without notice.

In this case, on September 16, 2016, the claimant volunteered to help work an extra shift because the employer was short staffed. She originally agreed to work ten to two o'clock and upon arriving, learned that she would be responsible for nearly forty patients between two halls, in addition to her supervisory duties as the charge nurse. She made the employer aware beginning at 10:30 a.m. that she had concerns for safety due to the lack of staffing. The claimant made three reports to her DON and the administrator, and was repeatedly told "we're working on it." The claimant was then asked to stay past her shift after making the employer aware that they had inadequate coverage after her shift. She agreed and was told she had to leave by 4:00 to make a prior engagement. She was told by the DON that someone would be there soon to relieve the claimant. The claimant did not end up leaving until almost 5:00 pm. Had the claimant left at her end time, regardless of her replacement arriving, she would have been disciplined and the employer could have faced consequences.

The employer has an obligation to be adequately staffed, to protect both the population served and its employees. Inadequate staffing would reasonably lead to delayed care, and potentially more errors. As a result of the claimant being overextended, she failed to sign off on a narcotic log, as required. While important, the claimant was aware that past practice in this scenario would warrant a verification check in the MAR and a note reminding the employee to sign off. Instead, the claimant received a threatening phone call from the employer, at 10:30 p.m. stating if she did not show up to the facility by midnight to sign the form that the police would be called as would the state of Iowa nursing board. The threatening call in itself is unsettling and unwarranted, but in light of the narcotics error likely being the result of the overextending of duties, the administrative law judge is persuaded that the claimant's repeated notice of her staffing/safety concerns to the administrator and DON, put the employer on notice of her reasonable concerns, which went unanswered. Based on the evidence presented, the administrative law judge is persuaded the employer's inaction and subsequent threatening call created detrimental and intolerable conditions. Thus, the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The December 28, 2016 (reference 01) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs

NOTE TO EMPLOYER:

If you wish to change the street name of record, please access your account at:

<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v= mpCM8FGQoY>