

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

KYLE B FRANKLIN
Claimant

APPEAL NO: 19A-UI-03628-JC-T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

STEAK-N-EGGS INC
Employer

OC: 11/18/18
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Kyle B. Franklin, filed an appeal from the April 23, 2019, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 24, 2019. The claimant participated personally. The employer participated through Stephanie Lee, corporate auditor.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibit 1 was admitted. 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 general manager for the employer's restaurant, Butcher Block Steakhouse, and was separated from employment on March 30, 2019, when he quit the employment. Continuing work was available.

The claimant was recruited and hired into his position by his manager, who was also a friend outside of work. The claimant had prior restaurant management experience and a couple months into employment, was informed that he was responsible for managing his manager's girlfriend.

Before quitting the employment, the claimant raised concerns with managing his manager's girlfriend. He brought the concerns to his manager directly, and also to the manager's father, who was co-owner of the business. The claimant cited to repeated issues of the girlfriend refusing to follow directives. She would tell the claimant, "I'm not going to do anything unless he (her boyfriend) tells me." When the claimant would bring the concerns to his manager, he was

provided no support and essentially told that he (the manager) would not intervene and the claimant could handle her.

The claimant stated his authority continued to be undermined by management's permitting the girlfriend and other employees to drink at the workplace, sleep at the workplace after hours and be otherwise unprofessional. This made it difficult for the claimant to manage the employees. The claimant cited to two specific incidents, including one in which the girlfriend slept in the restaurant and then chased the claimant around while wearing a cape and carrying a bottle of Fireball alcohol, while he tried to work. He also cited to needing to show the catering space and encountering employees there sleeping. After making repeated attempts to talk with management, the claimant tendered his resignation, citing to the work conditions being intolerable.

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 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.

The claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. "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). 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. Iowa Dep't 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 element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination."

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address her concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer."

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, 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 claimant has met his burden of proof to establish he quit for good cause reasons within Iowa law.

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).

Working with family members or significant others can pose unique challenges in the workplace, where the lines of professional and personal relationships understandably can become blurred. Such is the case here, where both the claimant was managed by his friend, and then also tasked with managing his manager's girlfriend. The claimant repeatedly brought forth concerns to his manager and the co-owner about how the relationship and management's friendships with employees were interfering with the ability to manage employees. Management's refusal to acknowledge or address these issues resulted in the claimant encountering employees being permitted to party and sleep in the restaurant after hours, and an overall undermining of his authority. Under the facts of this case, a reasonable person would conclude that the working conditions the claimant was subjected to were intolerable and were not effectively remedied at the point the claimant resigned. Accordingly, the administrative law judge concludes the claimant voluntarily quit the employment with good cause. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The April 23, 2019, (reference 02) decision is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn