IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

SCOTT E FOOTE Claimant **CRESLINE PLASTIC PIPE CO INC** Employer	**APPEAL 15A-UI-11885-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/27/15** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 15, 2015, (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 November 10, 2015. The claimant participated personally. The employer participated through Ralph Mericle, plant manager. Robin Nemec also attended on behalf of the employer. Employer exhibit 1 and Claimant Exhibits A, B, C, D, and E were admitted into evidence.

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 utility worker for approximately nine years and was separated from employment on September 25, 2015, when he resigned. Continuing work was available.

When the claimant resigned, he did not offer any explanation in his resignation letter, but told one management member that he was moving to Florida. The claimant did not elaborate as to why he resigned because he did not think it was relevant. The claimant asserted at the hearing, he did move to Florida because he bought a house there and preferred the weather, but that was not why he resigned; rather that he resigned due to mold at the employer's location.

Prior to separation, the claimant was employed almost ten years under the same working conditions, for this employer. In 2011, he was diagnosed as being HIV positive, which affected his immune system. The claimant believed being in a moldy environment was unhealthy, given his diagnosis, but remained employed there for several years after the diagnosis. The claimant did not raise any concerns with the employer about the work conditions, nor did he present to the employer, or at the time of the hearing, medical documentation advising he resign from his position with the employer. The employer did not deny that there is some level of mold that is unavoidable given the storage of lumber outside, (Claimant Exhibits A through E) but on

September 1, 2015, before the claimant's resignation, an OSHA inspector visited the premises and did not find any violations of the safety and health standards (Employer Exhibit 1).

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(21) and (2)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:
>
> (21) The claimant left because of dissatisfaction with the work environment.
>
> (2) The claimant moved to a different locality.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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 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 fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice. The evidence indicates the claimant worked for the employer for nearly ten years, under the same work conditions, with the presence of some unavoidable mold, but within the health and safety standards acceptable based on an OSHA inspection (Employer Exhibit 1).

A claimant with work issues or grievances must make some effort to provide notice to the employer to give the employer an opportunity to work out whatever issues led to the dissatisfaction. Failure to do so precludes the employer from an opportunity to make adjustments which would alleviate the need to quit. Denvy v. Board of Review, 567 Pacific 2d 626 (Utah 1977). In this case, the claimant did not give the employer the opportunity to preserve his employment or provide any supporting documentation, that his health was being adversely affected by the work conditions. In light of the 2011 diagnosis, the claimant remained employed for nearly four more years under the same conditions, and thereby acquiesced to the work conditions by not raising concerns with his supervisor or quitting earlier when they arose. It also cannot be ignored that when the claimant resigned from employment, he told a member of management that it was to move to Florida, and that he subsequently moved following the separation.

Based on the evidence presented, the administrative law judges concludes the claimant's leaving the employment may have been based upon good personal reasons, but it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The October 15, 2015, (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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jennifer L. Coe
Administrative Law Judge

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Decision Dated and Mailed

jlc/pjs