IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

VINCENT E JACKSON Claimant **DEPENDABLE DRAIN & PLUMBING INC** Employer	**APPEAL 17A-UI-10642-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/11/16** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 12, 2017 (reference 01) unemployment insurance decision that denied benefits based upon him voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on November 20, 2017. The claimant, Vincent E. Jackson, participated personally. Keri Clark participated as a witness for the claimant. The employer, Dependable Drain & Plumbing Inc., participated through witnesses Theodore Dann and Jeff Crigger. Claimant's Exhibit A was admitted. Employer's Exhibits 1 through 14 were admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as a general laborer. He began working for this employer on June 25, 2012 and his employment ended on September 30, 2017. His job duties included making manhole repairs.

On September 14, 2017, claimant and another co-worker (Randy) were in a verbal altercation on the job and after working hours. Both co-workers used profane language at each other and argued over who would throw away trash while cleaning the company truck. After work, the claimant and Randy were eating in a restaurant and began another verbal altercation. Claimant claims that Randy threatened to give him a "Chicago style beat down" during this altercation but no one else heard the alleged comment. Randy denied making the comment. Claimant began yelling at Randy and asking him questions about why he was not a hard worker. This was witnessed by Mr. Dann. Claimant was intoxicated during the verbal altercation.

Following the verbal altercation claimant reported to Mr. Dann that Randy was having someone follow him and his family. Mr. Dann informed claimant to contact the police. Mr. Dann spoke to Randy about whether he was harassing claimant and having someone follow him and his family.

Randy denied these allegations. Randy had apologized to claimant about the verbal altercation incident that occurred during work hours. Claimant told Mr. Dann that he refused to continue working because he feared for his safety after this verbal altercation. No police investigation was conducted because the police told claimant he did not have enough evidence against Randy.

On September 19, 2017, both claimant and Ms. Clark met with Mr. Dann. The parties discussed the fact that claimant did not want to return to work because he feared for his safety. Mr. Dann offered for claimant to work in Waterloo, Iowa but claimant refused to go out of town to work, even though Randy was not scheduled to work out of town. Following the meeting on September 19, 2017, claimant had stated that he did not want to return to work.

On September 30, 2017, Mr. Crigger texted claimant to see if he was ready to return to work. See Exhibit 13. Claimant responded by text stating in part: "I am no longer going to tolerate the constant racism, civil rights violations, hostile work environment, and OSHA violations that threaten my safety." See Exhibit 13. The text message went on to state: "We can either arrive at a reasonable severance agreement or I will get an attorney, file the necessary complaints with the government and pursue a much more difficult path." See Exhibit 13. Mr. Crigger accepted this text message as claimant's written resignation. There was continuing work available to claimant had he not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant determined he could no longer work with Randy. Claimant had an intention to quit and carried out that intention by tendering his written resignation and refusing to work out of town. In his text message, he gave the employer two options: (1) a reasonable severance agreement or (2) filing the necessary complaints with the government. Neither option involved the claimant continuing to work.

Because claimant quit, he 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).

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.

As such, if claimant establishes that he left due to intolerable or detrimental working conditions, benefits would be allowed. Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.,* 710 N.W.2d 1 (Iowa 2005). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956). Therefore, claimant was not required to give the employer any notice with regard to the intolerable or detrimental working conditions prior to his quitting. However, claimant must prove that his working conditions were intolerable or detrimental.

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 that Mr. Dann's testimony regarding the September 14, 2017 verbal altercation are more credible than claimant's version.

Claimant was the person who instigated the verbal altercation after work by yelling at Randy. Randy did not threaten claimant. Randy did not have any people follow the claimant or his family. Given the facts of this case claimant has failed to prove that under these same circumstances a reasonable person would feel compelled to resign. *See O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). Rather, the circumstances in this case seem to align with the conclusion that claimant was unable to work with Randy and that claimant was dissatisfied with his work environment in general. These are not good cause reasons attributable to the employer for claimant to have quit.

Iowa Admin. Code r. 871-24.25(6) 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 § 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 § 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. 871-24.25(21) 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 § 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 § 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.

As such, the claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The October 12, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Claimant is denied unemployment insurance benefits until such time as he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

_____
Dawn Boucher
Administrative Law Judge

_____
Decision Dated and Mailed

db/rvs