

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THERESA BENDER
Claimant

APPEAL 18A-UI-07238-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF TRANSPORTATION
Employer

**OC: 06/03/18
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Theresa Bender (claimant) filed an appeal from the July 2, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with the Iowa Department of Transportation (employer) when she retired, which is not a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on July 25, 2018. The claimant participated and was represented by her husband, Kevin Bender, who also testified on her behalf. The employer did not respond to the hearing notice and did not participate. No exhibits were offered or received into the record.

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 Driver's License Clerk in Davenport, Iowa beginning on March 27, 1992, and was separated from employment on March 29, 2018, when she quit.

In 2011, the claimant began working with Sunny Sandry, another Driver's License Clerk. After a couple of years, issues arose between Sandry, the claimant, and other employees. Sandry was granted leave under the Family Medical Leave Act (FMLA) which the claimant and other employees believed she abused. By 2017, Sandry was requesting the claimant's husband give her pain medication in exchange for sexual favors. The claimant reported these issues to management via emails sent to Mary Ford, her supervisor's supervisor, but nothing was done as Ford was friends with Sandry. The claimant's doctor advised the claimant to look for a new job due to the stress of her work situation.

The issues with Sandry came to a head in mid-2017 when she threatened the claimant by saying she was a snake in the grass and would get her. The claimant again reported the issue to management. At that time, other members of management discovered the other issues the claimant had with Sandry. Four supervisors were suspended for failing to act on the claimant's

issues. Ford was transferred to the Muscatine, Iowa office as a result of her failure to respond and Sandry was transferred to the Clinton, Iowa office due to her conduct. The claimant did not have any interaction with Sandry after the summer of 2017.

In January 2018, the claimant's supervisor notified her that her husband needed to stop calling upper management in Ankeny, Iowa about concerns regarding the issues with Sandry. In February 2018, the claimant gave the employer notice she was ending her employment. She stated in her resignation letter that she was retiring on March 29, 2018 even though there was continuing work available. The claimant decided to retire as she did not believe the issues she had with Sandry, prior to her transfer to the Clinton office, were being dealt with by the employer. The claimant was applying for other jobs but did not have another job at the time her employment ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

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:

...

- (3) The claimant left to seek other employment but did not secure employment.

...

- (6) The claimant left as a result of an inability to work with other employees.

...

- (21) The claimant left because of dissatisfaction with the work environment.

- (22) The claimant left because of a personality conflict with the supervisor.

...

(24) The claimant left employment to accept retirement when such claimant could have continued working.

Iowa Admin. Code r. 871-24.26 provides, in relevant part:

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.

...

(6) Separation because of illness, injury, or pregnancy.

...

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant 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). When a claimant provides multiple reasons for leaving his or her employment, each reason must be analyzed to determine if the reasons combined gave the claimant good cause attributable to the employer for leaving his or her employment. *Taylor v. Iowa Dept. of Job Serv.*, 362 N.W.2d 534, 540-41 (Iowa 1985).

The claimant contends she had to leave her employment due to a hostile work environment created by Sandry and due to her doctor's advice to find another job because of the stress created by Sandry. Both of these issues were, or should have been, resolved when Sandry was

transferred to the Clinton location as the claimant no longer had any interaction with Sandry. Therefore, the claimant has not established she voluntarily quit due to an intolerable working environment or due to an employment related illness or injury.

The claimant gave her notice in February 2018 that she would be retiring on March 29, 2018. She may have been seeking another job but did not have a new job at the time she separated from employment. The claimant's decision to leave because she did not like the work environment or disagreed with her supervisor about her husband not being allowed to contact upper management and various other issues, was not for a good cause reason attributable to the employer. Benefits are denied.

DECISION:

The July 2, 2018, 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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn