IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

SUSAN J POWERS Claimant **COMFORT CARE MEDICARE INC** Employer	**APPEAL 16A-UI-10411-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/04/16** **Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 20, 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 October 7, 2016. The claimant participated personally. The employer participated through Lindsey Burton. Julie Tow and Tami Clarke also testified for the employer. Claimant exhibit A was received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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 billing and payroll specialist and was separated from employment on August 30, 2016, when she quit the employment without notice. Continuing work was available.

The employer operates under two state account numbers, associated with Comfort Care Inc. (272437-000) and Comfort Care Medicare Inc. (274497-000). The claimant was hired under to perform work under both entities (which are split based on care provided to private care versus Medicare patients) and in March or April her job duties adjusted to be under the scope of duties for Comfort Care Medicare Inc. only. The undisputed evidence is that when the claimant tendered her resignation, it encompassed both Comfort Care Inc. and Comfort Care Medicare Inc.

The claimant quit her employment on August 30, 2016, after observing a lunchroom discussion that upset her. During lunch on August 30, 2016, the claimant was present during a conversation involving multiple employees, including Tami Clarke, Julie Tow and Lindsey

Burton, in which the recent national police shootings was referenced. Ms. Clarke, whose daughter is a police officer, referenced "why don't they stay home and watch soap operas?" which the claimant interpreted "they" to be a reference to African Americans. The conversation continued with references to African Americans voting for Barack Obama as well as Ms. Burton referencing people "taking advantage of the system." The employer denies that African-Americans were referenced specifically. No evidence was presented that vulgar, profane or racial slurs were used in the discussion. At no time did the claimant reference she was upset, change the topic or leave the conversation. Upon considering her own diverse family, the claimant became upset. The claimant quit by way of email, leaving without notifying the employer that she was upset or intended not to return. Upon receiving the email, the employer was surprised and tried to immediately call the claimant, who was unresponsive.

In addition to the lunchroom discussion on August 30, 2016, the claimant took into consideration an event that occurred a few months prior to separation. The event involved Ms. Tow, receiving a video via email or social media and encouraging employees, including the claimant to view it with her. The evidence is disputed as to the content; the claimant indicated she perceived the video to be "anti-Muslim" in nature and referencing immigration. Ms. Tow asserted the video showed the plight of women and children and she felt as fellow women, her peers would also be interested by the video. Ms. Tow further denied the video being anti-Muslim or knowing the origination of the video, or intending to offend anyone, including the claimant.

At no time before resignation, did the claimant make the employer aware either with the video or lunchroom discussion that she was uncomfortable by the nature of conversations, or that she had a diverse family background. At no time did the claimant tell the employer she was contemplating quitting because of her perception of a racist office. The claimant stated she did not notify the employer of her concerns based on the fact management members were responsible for making them, as well as the fact her office was heavily populated by management so she didn't think it would help matters.

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:
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> 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(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

Iowa Admin. Code r. 871-24.25(22) 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:
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> (22) The claimant left because of a personality conflict with the supervisor.

Iowa Admin. Code r. 871-24.25(20) 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:
>
> (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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 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 fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice. Although the administrative law judge does not condone the unprofessional and offensive comments made by various employees on August 30, 2016, the administrative law judge is not persuaded that the single conversation on August 30, 2016 over lunch referencing race relations would constitute detrimental or intolerable working conditions under Iowa unemployment insurance law.

The administrative law judge is persuaded that the claimant had the opportunity to speak up at the table, to change the topic of conversation, or to later speak to any member of management, including the owner, about her concerns, but chose not to do so. 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). The administrative law judge is not persuaded that the claimant could not have made any attempts to notify the employer of her discomfort with the topics of non-work related matters being discussed, in light of a management presence in her office. Given the stale dates of the other complaints, they are not individually addressed as the claimant acquiesced to them by not raising concerns with her supervisor or quitting earlier when they arose.

Although the isolated video and lunch room conversations upset the claimant and may have been hurtful, the administrative law judge does not find the language was vulgar or profane, nor conduct which would amount to intolerable working conditions sufficient for a reasonable person to feel they had to resign. While the claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The September 20, 2016, (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.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs