

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SYREETA N MASSIE

Claimant

GOTHIC RIVER LODGING LLC

Employer

APPEAL 17A-UI-08184-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/16/17

Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the August 7, 2017, (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 30, 2017. The claimant participated. The employer participated through Jeraica Brooks, general manager, and Anna Crane, front office manager. 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.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

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 housekeeper beginning June 29, 2017 and was separated from employment on July 10, 2017, when she quit the employment. Continuing work was available.

The claimant clocked in to her shift on July 10, 2017, at 9:00 a.m. and clocked out between 7:30 p.m. and 8:00 p.m. During this time, the claimant completed cleaning all of her rooms. She was not given a fifteen minute break or her 30 minute meal break. Upon finishing her rooms, she went to Angela Banks, her immediate supervisor. She asked to take a break. Ms. Banks told her to go talk to Ms. Brooks, who was operating the front desk. Ms. Brooks is unaware if the claimant was granted any breaks that day but advised the claimant to go speak to Ms. Crane.

Ms. Brooks declined to grant the claimant a break, stating she had to stay and complete the rooms or her job would be forfeited. The claimant did not stay, and separation ensued.

Ms. Crane stated she offered the claimant a break and the claimant declined. The claimant denied being offered a break and asserted Ms. Crane did not arrive to work until the same time the claimant was leaving.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$355.00, since filing a claim with an effective date of July 16, 2017. The administrative record also establishes that the employer did participate in the August 4, 2017 fact-finding interview or make a witness with direct knowledge available for rebuttal. Jeraica Brooks attended on behalf of the employer.

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 § 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. 871-24.26(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.

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).

A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added 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 recently concluded that, because the intent-to-quit requirement was added to rule 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. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

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 establishes claimant has met her burden of proof to establish she quit for good cause reasons within Iowa law.

In this case, the claimant performed work for approximately ten and a half hours, performing housekeeping duties, without being relieved for a break or meal. When the claimant requested one to Ms. Brooks, after completing her room assignments, she was told she had to go back and help finish rooms, and failure to do so would be forfeiting her job. The administrative law judge was not persuaded that Ms. Crane directed the claimant to take any break or that she declined any break offered to her. A reasonable lay person or employer would know that working a physically taxing job for over ten hours without expectation of relief is very likely to create an intolerable strain on even an otherwise healthy worker's physical and mental health. The employer's refusal to provide adequate breaks to the claimant created an intolerable work environment. Thus, the claimant has established good cause reasons for leaving the employment. Benefits are allowed provided she is otherwise eligible.

Because the claimant is allowed benefits, the issues of overpayment and relief of charges are moot.

DECISION:

The August 7, 2017, (reference 04) decision is affirmed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible and the benefits withheld shall be paid.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed
jlb/scn