

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTINE K BAILEY
Claimant

APPEAL 16A-UI-11934-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROTHERS MARKET THREE
Employer

**OC: 10/02/16
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 October 27, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 21, 2016. The claimant participated personally. The employer participated through William (Bill) Kamerling, store manager. Debra Teran, office manager, also testified. 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 the claimant voluntarily quit the employment with good cause attributable to the 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 shift/produce manager and was separated from employment on September 29, 2016, when she quit the employment without notice. Continuing work was available.

The claimant had been employed since 2012 for this employer, and during the course of the claimant's employment, she had been made aware of Mr. Kamerling's temper through interactions with other employees. The claimant had no history of Mr. Kamerling "screaming" or cursing at her personally prior to separation. The final incident occurred on September 29, 2016, when the claimant was working, and Mr. Kamerling was visiting the employer premises, even though he had not been medically cleared from an accident two days prior. Mr. Kamerling was on premises to verify the employer was ready for the upcoming weekend, and while

visiting, he observed the claimant and two co-workers standing by the timeclock, discussing the upcoming weekend. Specifically, the claimant and her two peers were discussing whether additional meat and produce trays should be on hand with the upcoming local homecoming game and it being the University of Iowa's homecoming weekend. The claimant believed the conversation had taken place for approximately two minutes when Mr. Kamerling questioned the claimant and her peers. The undisputed evidence is Mr. Kamerling raised his voice, and questioned the employees. Mr. Kamerling indicated he has a loud voice, but also that he hoped to upset the claimant. The claimant reported Mr. Kamerling said to her that the matter was none of her "f—king business." The claimant became upset by the way Mr. Kamerling spoke to her.

Later in her shift, while putting away bananas, the claimant again encountered Mr. Kamerling in the meat room, as he was yelling at her co-worker, and asked her "what do you have to say now" as well as informed her that he would speak with her later in his office. The claimant asserted based on location, customers may have heard the yelling. Upset, the claimant quit the employment the same day, by way of tendering her resignation to Ms. Teran. She did not elaborate about why, except to reference an incident that occurred that day. Ms. Teran was not present at the time of the incidents between the claimant and Mr. Kamerling.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,668.00, since filing a claim with an effective date of October 2, 2016. The administrative record also establishes that the employer did participate in the October 27, 2016 fact-finding interview by way of William Kamerling.

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:

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).

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 intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment without notice.

The credible evidence presented, is the claimant voluntarily quit the employment after store manager, William Kamerling, yelled at her, and cursed at her, on September 29, 2016. Mr. Kamerling admitted he confronted her by yelling or screaming with the purpose of upsetting her. Mr. Kamerling was in a management role, and arguably held to a higher standard than subordinates. The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Inasmuch as an employer can expect professional conduct and language from its employees, the claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. Regardless if Mr. Kamerling was frustrated or even in pain from his recent accident, his actions were purposeful. No employee should have to endure intimidation, physical and emotional tantrums, name-calling, and bullying behavior in order to retain employment or avoid disqualification from unemployment insurance benefits. His intentional yelling to upset the claimant on September 29, 2016 created an intolerable work environment for the claimant and that behavior gave rise to a good cause reason for leaving the employment. Benefits are allowed.

Because the claimant is eligible for benefits, the issues of overpayment and employer relief from charges are moot.

DECISION:

The October 27, 2016, (reference 01) decision is affirmed. The claimant quit the employment for reasons that constitute good cause under Iowa law. Benefits are allowed, provided she is otherwise eligible. The claimant has not been overpaid benefits. The employer's account shall not be relieved of charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs