IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CODI N WALSH Claimant **RUE 21 INC** Employer	**APPEAL 18A-UI-02843-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/04/18** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Codi N. Walsh, filed an appeal from the February 20, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2018. The claimant participated personally. The employer participated through Marcy Schneider, hearing representative with Talx and Michael Barre, regional 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.

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 district manager and was separated from employment on February 8, 2018, when she quit the employment. Continuing work was available.

The claimant worked for the employer for approximately ten years and had been in the position of district manager for one year and ten months before separation. When she moved into the district manager position, she understood she would be paid $60,000 for managing eight stores, and would be paid additional as more stores were added to her workload. The claimant was expected to visit her stores approximately every seven days, and at the end of her employment she had had eleven stores to manage, but her pay had not increased.
Mr. Barre became the claimant's regional manager effective September 4, 2017, and indicated that in April 2017, the employer had eliminated 39 district manager positions companywide, and in May 2017, filed for bankruptcy. He acknowledged the claimant had not received anticipated increases of pay but was allowed to keep her job.

The claimant experienced significant stress and associated panic attacks with the job, which also required her to balance time on the road and her family's activities. Under management

before Mr. Barre, the claimant had been permitted to take the weekends off, and under Mr. Barre, she was allowed to flex one week day off in exchange for working on Saturdays. In addition, the claimant stated she was upset that she was not permitted to take vacation, away from the job, but rather was informed she must keep close to her phone and email, and "not miss a beat." Because the district had been restructured and several other district managers had either left the company or the positions were not open, the claimant could not coordinate for another manager to cover her district while she took vacation after Christmas. Mr. Barre acknowledged due to staffing issues, the claimant did not have coverage and was expected to handle work matters while on vacation.

The final straw for the claimant occurred at the end of January 2018. The claimant had received an invitation to attend a mandatory training event in Chicago. The training was February 20-21 but employees were expected to be in Chicago in the evening of February 19, 2018, to attend dinner and drinks and team building. February 19, 2018, coincided with the claimant's son having his first solo in a school concert. While the claimant had previously cancelled her own appointments to attend work events, she did not want to miss her son's event. She notified Mr. Barre of her conflict, stating she could get up very early on February 20, 2018 and make it to the training but would not be there for dinner and team building the night before the event. Mr. Barre informed the claimant that he had other parents on the team and would not excuse her from the event. He further directed her that she would need to make a choice between her family events and her job. The claimant tendered her resignation the next day.

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.

Iowa Admin. Code r. 871-24.26(2) 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:
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> (2) The claimant left due to unsafe 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. 871 IAC 24.25. The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv*., 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv*., 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." Id. 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).

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 his burden of proof to establish she quit for good cause reasons within Iowa law.

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).

In this case, the claimant in her position as district manager, experienced significant changes in the workplace in her final months of employment. The claimant was first informed she was expected to manage and visit eight stores on a weekly basis, and would be compensated for additional stores she took on. However, at the end of her employment, she was responsible for eleven stores (a 37.5% increase of workload) without any compensation.

In addition, due to restructuring (which included eliminating 39 district managers) and filing for bankruptcy, the employer did not have adequate coverage for when district managers were on vacation. Consequently, when the claimant attempted to take her vacation in late December 2017, there was no available manager to cover her stores, and she was informed by her manager that she must stay by her phone and email and "not miss a beat." Consequently, the claimant was unable to actually take her vacation away from work. In addition, the claimant had previously been permitted to have weekends off to be with her family after traveling during the week, but under Mr. Barre's leadership, was expected to work Saturdays in exchange for a day off during the week. Clearly, these were significant changes in the position from when the

claimant was promoted, and a reasonable person would feel significant strain in balancing personal versus professional obligations under these conditions.

The claimant in this case was loyal and tenured, and demonstrated her ability to try and be flexible with the employer's ever changing business, as her workload changed, her schedule changed, and she had limited support as her peers' positions were eliminated or they quit. The conditions the claimant was subjected were not temporary or isolated, but rather continuous. The administrative law judge is persuaded the employer's insistence of the claimant working through her vacation when there was no coverage and then insisting she choose between her family and attending a social/team building function, in light of all other conditions, created hostile and intolerable working conditions, that were good cause reasons for the claimant to quit the employment. Thus, the claimant has established good cause reasons for leaving the employment. Benefits are allowed.

DECISION:

The February 20, 2018, (reference 01) unemployment insurance decision is reversed. 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.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn