

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTA LIVINGSTON
Claimant

SAYLES SALES & SERVICE INC
Employer

APPEAL 16A-UI-10054-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/14/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25(22) – Personality Conflict with Supervisor
Iowa Admin. Code r. 871-24.26 – Intolerable Working Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 6, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on September 29, 2016. The claimant Krista Livingston participated and was represented by attorney Eric Mail. The employer Sayles Sales & Service Inc. participated through Owner Eberth Sayles. Witnesses Donnie Thomsha and Monte Sayles testified on behalf of the employer. Jolene VanHecke was also present on behalf of the employer but did not testify.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a bookkeeper/office manager from July 22, 2015, until this employment ended on August 18, 2016, when she voluntarily quit.

Claimant testified throughout her employment the owner employer, Sayles, was difficult to work with. According to claimant Sayles would regularly come to her office to complain about other employees. Claimant testified Sayles would call other employees slow and dumb, discuss employees' sexuality, and make comments about women acting crazy because of menopause or the full moon. She also claimed the Sayles once called a customer a towelhead and commented to her that individuals on Indian descent like to barter. Claimant initially quit in April 2016, but then agreed to return to work if Sayles stopped making such comments. Sayles denied making any of the alleged comments, with the exception of the one regarding bartering. Additionally, Sayles testified that, while he did meet with claimant in April, he did not recall her bringing up any of these allegations.

On August 18, 2016, another employee, Thomsha, came to claimant because he was going to clean the floors and was looking for a mop. The two were unable to find any mops so claimant sent Thomsha to the store to buy one. Sayles was not present in the building at the time. Claimant testified once Sayles returned to the building and saw the mop he began yelling at Thomsha. Claimant then intervened and told Sayles she had directed Thomsha to go buy the mop. According to claimant Sayles then began yelling at her, claiming she had no authority to authorize such purchases. Claimant testified she could no longer stand by and watch Sayles act in this manner towards other employees or herself, so she turned in her keys and quit effective immediately.

During his testimony Sayles denied yelling at anyone on August 18. According to Sayles he asked claimant and Thomsha why they bought the mop, because there were two in the shop already. Sayles also admitted he told claimant she lacked authority to authorize the purchase, but denied he yelled or did this in a disrespectful manner. Sayles testified he did not understand why claimant quit that day, but work would have continued to be available to her. Thomsha, who was not present for Sayles' testimony, similarly denied Sayles yelled at him. Thomsha went on to testify it was claimant yelling at Sayles. Thomsha also denied there was anything hostile about the work environment. Monte Sayles, who was not present for the testimony of Sayles or Thomsha, similarly testified, on August 18, the only individual he heard yelling or swearing was the claimant.

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.

Iowa Code section 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. 871-24.25 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:

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

Iowa Admin. Code r. 871-24.26 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.

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). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

Claimant testified Sayles was abusive towards her and another employee, Thomsha, on August 18, 2016 and this behavior, coupled with his past behavior, led her to quit. Sayles denied this accusation. Sayles generally denied the other allegations made by claimant against him. Thomsha similarly denied he had been yelled at by Sayles or felt the work environment was hostile. Thomsha went on to state he heard claimant yelling at Sayles. This testimony was corroborated by Monte Sayles. After assessing the credibility of the witnesses 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 employer's version of events to be more credible than the claimant's recollection of those events.

It is clear claimant did not get along with Sayles and likely did not approve of his management style. Claimant does not allege any threats, physical abuse, or profane name-calling. The final event leading to claimant's resignation, while frustrating to her, was relatively minor and not indicative of an intolerable work environment. Claimant has failed to meet her burden in showing that Sayles' behavior was so offensive or abusive as to amount to an intolerable working environment. While 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 6, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she is deemed eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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