

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VALORIE G MARR
Claimant

REMBRANDT ENTERPRISES INC
Employer

APPEAL 20A-UI-01617-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/02/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant, Valorie G. Marr, filed an appeal from the February 18, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 10, 2020. The claimant participated personally. The employer, Rembrandt Enterprises Inc. elected to participate only through written documentation, which was provided to the claimant prior to the hearing and received as Employer Exhibits 1-8. Claimant Exhibits A-I were also admitted. 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 claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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 scale house operator and was separated from employment on January 31, 2020.

The claimant began employment in 2012 and worked in several positions throughout the company. Prior to separation, she had been issued a final written warning on November 15, 2019, for creating dissension in the workplace (Employer Exhibit 1). The claimant refused to sign the warning because she disagreed with it (Employer Exhibit 2). The claimant was most recently given a performance review on May 25, 2019 (Employer Exhibit 3), which she also disputed (Employer Exhibit 4). In the review it stated, “Valorie would greatly benefit from taking some time before reacting to situations and gathering her thoughts prior to engaging in conversations (Employer Exhibit 3). The claimant also disagreed with the employer’s

performance review, as she didn't feel it reflected her work history or loyalty to the company (Employer Exhibit 4).

Prior to her final day of employment, the claimant had reported Crystal to human resources a few months earlier, after Crystal yelled about the claimant moving a raincoat, which she denied moving. A meeting was held with both Crystal and the claimant, with human resources, as well as another security guard. The claimant did not agree that the meeting was held with everyone together, rather than one-on-one with human resources. The meeting ended with human resources telling everyone they needed to get along.

On the claimant's final day of employment, she did not work her complete shift. She clocked out early after becoming upset. When the claimant had arrived to work that day, she stated the security guard, Crystal, had given her an evil look while she was in her car. When she walked by Crystal and said good morning, Crystal did not return the greeting.

Then when she arrived to her office space, someone had rearranged her office supplies, including weaving a phone card between clipped clipboards (Claimant Exhibit D), turning her keyboard backwards (Claimant Exhibit E), turning her calendar upside down (Claimant Exhibit F) moving her computer mouse (Claimant Exhibit G), and moving two sets of stacking trays (Claimant Exhibit H). The claimant didn't ask or confirm who was responsible for the moving of her desk items.

The claimant took photos of her desk and text messaged them to her boss, John (Claimant Exhibit C). Then she began crying. She then called her manager and he did not respond. The claimant called another manager, Wes, and told him she was "leaving and could not take the harassment (Claimant testimony)."

Her manager, John, text messaged her back and said:

Val, I need you to return to work and clock in. No manager has authorized you to leave the site and I will consider this walking off the job if you choose not to return. You should have gone to the front office and discussed an issue if you need to resolve an issue especially if I was not available. (Claimant Exhibit C).

The claimant had not gone to the front of the office, where human resources was located, before leaving. The claimant responded that she was not working in that environment "seeing how you're not going to do anything about it" (Claimant Exhibit C). At 9:02 a.m., her manager asked her if she was ending her employment. The following morning (which was a Saturday), the claimant replied that she had been thinking a lot about the situation and he could call her if he wanted (Claimant Exhibit C). The claimant had assumed that the employer would have called her after she left on Friday (Claimant testimony.) The claimant denied quitting the employment but separation ensued after she told Wes she was leaving, left her shift early and refused to return when requested by management.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but quit without good cause attributable to the employer.

An unemployed person who meets the basic eligibility criteria receives benefits unless they are disqualified for some reason. Iowa code 96.4. Generally, disqualification from benefits is based on three provisions of the unemployment insurance law that disqualify claimants until they have

been reemployed and they have been reemployed and have been paid wages for insured work equal to ten times their weekly benefit amount. An individual is subject to such a disqualification if the individual (1) "has left work voluntarily without good cause attributable to the individual's employer" Iowa Code 96.5(1) or (2) is discharged for work –connected misconduct, Iowa Code 96.5(2) a, or (3) fails to accept suitable work without good cause, Iowa Code 96.5(3).

The first two disqualifications are premised on the occurrence of a separation of employment. To be disqualified based on the nature of the separation, the claimant must either have been fired for misconduct or have quit but not for good cause attributable to the employer. Generally, the employer bears the burden of proving disqualification of the claimant. Iowa Code 96.6(2). Where a claimant has quit, however, the claimant has "the burden of proving that a voluntary quit was for good cause attributable to the employer pursuant to Iowa Code section 96.5(1). Since the employer has the burden of proving disqualification, and the claimant only has the burden of proving the justification for a quit, the employer also has the burden of providing that a particular separation was a quit. The Iowa Supreme Court has thus been explicitly, "the employer has the burden of proving that a claimant's departure from employment was voluntary." *Irving v. Employment Appeal Board*, 883, NW 2d 179, 210 (Iowa 2016).

Quit not shown: 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.

A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). Generally, a quit is defined to be a "termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." Furthermore, 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). While the claimant denied quitting the employment, the claimant's conduct is what initiated the separation. She left her shift before it ended, she told the employer she was "leaving" and she refused to return when requested. She also delayed responding to her manager's text message for almost 22 hours after he asked her if she had quit the employment, even though she expected him to respond timely to her text messages and phone call the day before. The administrative law judge is persuaded that the claimant displayed intent and action to end the employment through her conduct on January 31, 2020. Therefore, the administrative law judge is persuaded the claimant quit the employment and was not discharged. The issue is then whether she quit with good cause attributable to the employer, according to Iowa law.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer. 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).

Iowa Admin. Code r. 871-24.25(6) 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:

(6) The claimant left as a result of an inability to work with other employees.

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that she considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. *Hy-Vee Inc. v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005); *Swanson v. Employment Appeal Board*, 554 N.W.2d 294 (Iowa 1996); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem, it then has made the cause for quitting "attributable to the employer." Previously, the claimant had informed the employer she was upset and it responded with a meeting to air out the issues between the employees. This is a reasonable response to quash employee conflict. The claimant did not give management or human resources an opportunity to validate her concerns or investigate when she hastily left on January 31, 2020.

Based on the evidence presented, the administrative law judge is not persuaded Crystal's conduct on January 31, 2020 by way of making an "evil face" or not saying "good morning" to the claimant would be considered harassment. The undisputed evidence is the claimant is unsure who rearranged her office, or whether Crystal was responsible for it. The claimant may not have found it to be funny or professional, but based upon the culmination of evidence presented by the claimant, the administrative law judge is not persuaded the conditions between the claimant and Crystal ever escalated to a point that would be deemed harassment or a hostile work environment, but rather due to personality conflict.

The evidence further reflects that while the claimant may have been a loyal and hardworking employee, she had also been counseled twice about her interactions with coworkers, not including Crystal (Employer Exhibits 1-4). It had been specifically written in her performance review that she needed to work on taking time before reacting in the workplace (Employer Exhibit 3).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. 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).

The administrative law judge is not persuaded that a reasonable person would have quit the employment on January 31, 2020. Therefore, the administrative law judge concludes the claimant may have had good personal reasons to quit the employment, but has failed to

establish she quit for good cause attributable to the employer according to Iowa law. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated February 18, 2020, (reference 01) is affirmed. The claimant quit 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.

Jennifer L. Beckman
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Decision Dated and Mailed

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