

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANICE F JENKINS
Claimant

DOLGENCORP LLC
Employer

APPEAL 16A-UI-06060-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/01/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 17, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 16, 2016. Claimant participated. Employer participated through store manager, Shonna Ferrer.

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 part-time as a key holder (lead sales associate) from June 11, 2011, and was separated from employment on April 8, 2016, when she quit.

Ms. Ferrer testified the employer has a written policy that lead sales associates have to have a driver's license. In January 2016, Ms. Ferrer told claimant she needed to have a driver's license. The employer gave claimant a verbal warning and gave her until mid-February to get a driver's license. Claimant stated she did not have a driver's license and did not want to get one. The employer then gave claimant a written warning on March 18, 2016, for not having a driver's license. The employer gave claimant until April 8, 2016 to get a driver's license or she would have to step down from her position and become a sales associate (cashier). Claimant would remain at the same hours, but Ms. Ferrer was not sure about the pay. The employer did not tell claimant that her pay would be reduced if she became a sales associate. Claimant believed her pay would be reduced from \$10.00 per hour to \$9.00 per hour. Ms. Ferrer is not aware of whether claimant was going to lose her dollar pay. The district manager makes that decision on whether claimant was going to lose her dollar pay. Claimant never asked Ms. Ferrer about her pay.

On April 7, 2016, claimant worked her shift with an assistant manager. During claimant's shift, a customer made a complaint to the corporate office that claimant was using vulgar language and it was loud enough for customers to hear. The assistant manager called Ms. Ferrer that

evening. Ms. Ferrer told the assistant manager to have a conversation with claimant and tell her she was the cashier and to run her register and get her job done.

On April 8, 2016, claimant met with Ms. Ferrer. Ms. Ferrer asked claimant to write a statement about April 7, 2016. Claimant denied saying anything and that it was ridiculous. Ms. Ferrer then discussed with claimant about stepping down as a key holder (lead sales associate) and become a cashier. Claimant told Ms. Ferrer that she was quitting. Claimant told Ms. Ferrer that this was what the employer wanted and she was not going to be a cashier. Ms. Ferrer asked claimant if she was sure she wanted to quit and she said yes. Claimant gave Ms. Ferrer her keys and walked out the door.

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. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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. 871-24.25(27) and (28) 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:

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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). In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). 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 Iowa Admin. Code r. 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).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Claimant's decision to quit because she did not agree with the supervisor about what happened on April 7, 2016, was not for a good cause reason attributable to the employer. Ms. Ferrer was only asking claimant to write out what happened, but claimant refused to write out what happened and quit. Furthermore, the employer never told claimant that her pay was going to be reduced if she became a sales associate. Although claimant believed her pay would be reduced by one dollar, she never followed up with human resources. Claimant also did not ask Ms. Ferrer about whether her pay was going to be reduced. Even if claimant's pay was reduced by one dollar, it would not be a 25% reduction in her pay and she would still have the same hours.

While claimant's leaving the employment 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 must be denied.

DECISION:

The May 17, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs