

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORALITA SHUMAKER
Claimant

CARE INITIATIVES
Employer

APPEAL 21A-UI-08356-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 22, 2021, (reference 03) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 7, 2021. Claimant participated and testified. Employer participated through Equifax Representative Alyce Smolsky, Interim Administrator Tony Janusz and Administrator Dallas Urban. The administrative law judge took official notice of the agency records.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without 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 certified nursing assistant from November 30, 2020, until she was separated from employment on February 6, 2021, when she quit. The claimant worked the third shift which had variable hours due to staffing and the client census. The claimant's immediate supervisor was Director of Nursing Jillian (last name unknown).

The employer has a procedure for reporting work-related concerns. According to this procedure, if an employee has a work-related concern, then they must first report the concern to their immediate supervisor, then to the administrator, and finally using the corporate hotline.

Interim Administrator Tony Janusz received reports from staff that patient-client ratios were disproportionate. Mr. Janusz did what he could to address the situation, but he was not able to resolve it completely. Mr. Janusz did not receive reports from the claimant or other staff that they had been subjected to sex or race-based biased statements or epithets prior to the claimant's resignation.

On January 20, 2021, the claimant submitted her resignation to Mr. Janusz effective February 6, 2021. In her resignation letter, the claimant stated she did not believe she had a manageable workload in terms of hours and patients assigned to her. The claimant said she would consider continuing there if the employer placed her in a pro re nata position.

On January 25, 2021, a resident made an accusation that the claimant had verbally abused him who was African American. The employer began an investigation regarding the incident.

On January 27, 2021, the claimant was called in to meet with investigators regarding the resident's allegations. The claimant spoke with investigators and provided a written statement in response. The claimant told the investigators that the resident called her sex-based and race-based epithets.

On January 28, 2021, Mr. Janusz informed the claimant that the investigation into her regarding the resident's allegation was not substantiated. He further informed the claimant that her resignation would be accepted and she would be paid for the days she was under investigation. The claimant did not ask about whether a PRN position was available at that time.

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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

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. EAB*, 433 N.W.2d 700 (Iowa 1988).

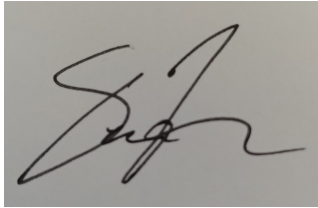
The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, 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. In particular, the administrative law judge does not find credible that she quit due to being called race-based or sex-based epithets.

Instead, the claimant quit due to low staffing relative to the patient census at the time. This was not a change in the contract of hire because the claimant's hours always varied due to client demands. 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 March 22, 2021, (reference 03) 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 has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown on a light gray background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

June 29, 2021
Decision Dated and Mailed

smn/kmj