

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COREY W BICKFORD
Claimant

SEARS MANUFACTURING CO
Employer

APPEAL 15A-UI-10763-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 18, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 8, 2015. Claimant participated. Employer participated through human resources manager, Trisha Taylor, and hearing representative, Todd Richardson. The administrative law judge took official notice of the claimant's summary employer/wage information and marked it as Department Exhibit One.

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 an assembler from February 19, 2004, and was separated from employment on July 10, 2015, when he quit.

Around June 29, 2015, claimant told Ms. Taylor he was going to quit. During this meeting, claimant told Ms. Taylor he was giving his two weeks and they decided his last day would be July 10, 2015. Claimant told Ms. Taylor that he was quitting because his dad was sick and he was moving to his dad's house in Missouri to take care of him. Ms. Taylor asked claimant if there was something the employer could do to change his mind and claimant said no. Claimant told Ms. Taylor that with the condition his dad was in and the commute to work (claimant's commute was 100 miles round trip), he had already made up his mind.

Claimant did not mention to Ms. Taylor he was quitting because of a lack of hours. For about the last year, it has been a slow period for the employer. The employer tries to get their employees 40 hours weeks per week, but it is not always possible. The employer did not know that the lack of hours was an issue for claimant. The first time Ms. Taylor learned this was an issue was at this hearing. The employer does report the wages for claimant. Claimant's wages declined in the third and fourth quarters of 2014 and declined again in the first quarter of 2015. Department Exhibit One. In the second quarter of 2015, claimant's wages increased beyond the third quarter of 2014. Department Exhibit One. Prior to June 29, 2015, claimant had not

spoken to the employer about his hours. The employer had not told claimant he was going to be discharged. There was continuous work available for claimant had he not quit.

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(2), (23), (30) and (37) 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 § 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 § 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:

(2) The claimant moved to a different locality.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

(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.

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).

On June 29, 2015, claimant told Ms. Taylor he was quitting in approximately two weeks. The reason claimant gave Ms. Taylor was that he was going to move to Missouri to take care of his sick dad. Claimant also mentioned the commute to work as a reason for his quitting, even though claimant had traveled this commute his entire employment. Ms. Taylor asked claimant if there was anything the employer could do to change his mind. The employer gave claimant this opportunity to let it know if there was anything it could do to keep him as an employee; claimant could have asked more hours or to work on a different line. Claimant told Ms. Taylor no. Ms. Taylor accepted claimant's resignation on behalf of the employer.

On June 29, 2015, claimant never mentioned he was quitting over a lack of hours. However, at this hearing, claimant said he quit because of the lack of hours. Both parties agreed that for approximately a year, business for the employer has been slow and sometimes employees did not get their full 40 hours. Claimant testified that he complained about his lack of hours to his supervisors, yet he did not cite it as a reason for quitting on June 29, 2015. Claimant had worked for approximately a year for the employer while its business was slow and the hours per week varied, thus acquiescing to any changes. Furthermore, in claimant's most recent full quarter of employment (second quarter of 2015), his wages increased. Department Exhibit One. This strengthens Ms. Taylor's testimony that claimant did not cite a lack of hours as a reason for quitting on June 29, 2015.

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 September 18, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs