



January about keeping his personal cell phone usage at a minimum, and to always act ‘professional.’ (1:18:50-1:19:05; 1:35:02-1:36:11; 1:58:43-1:58:57; 2:01:41) During a meeting between the Claimant and the Employer on January 14, 2016, Mr. Robeson expressed to Mr. Gerth that he needed to change his attitude, be more productive and accept criticism without making it a big deal. (Exhibit C-4) Mr. Gerth laughingly indicated that he preferred to work with DePauw. The Claimant’s overall demeanor towards Robeson up to that point had been somewhat dismissive and disrespectful. He routinely referred to clients over the phone as “man” as well as addressed his superiors, who were older than him, in the same way.

At the January meeting, the Claimant expressed his opinion that his job had significantly changed and he felt overwhelmed. (2:13:06-2:13:50) Robeson told the Claimant that his duties as a servicing officer/company vice president included more than just writing financials and spreadsheets. (2:15:37; 2:15:47; 2:18:05-2:18:44; 2:21:55-2:22:05; Exhibit C-4) The Employer paid the Claimant a vice president’s salary at nearly \$100,000 annually and not an entry level position simply writing financial statements, which the Claimant’s expectations seemed to align with. (2:18:08-2:18:40) He advised Mr. Gerth to think about their conversation; if he couldn’t accept it, then he could have 30 days with pay to look for something else. (2:12:45; 2:14:07-2:14:45) Robeson also indicated that he preferred the Claimant would stay on so that they could work things through and improve their interaction together. (1:51:49-1:53:49; 2:15:27-2:16:15)

Mr. Gerth agreed to stay on and salvage the employment relationship. (1:54:12) He later told DePauw that he felt “uncomfortable” working with Mr. Robeson whom he believed had been staring at him and following him around in his vehicle. (1:14:49-1:16:22; 1:32:29-1:33:05) The Claimant felt he was being harassed and filed a civil rights age discrimination complaint on February 15, 2016 (8:40-8:45) after being hospitalized with severe anxiety.

In mid-March 2016, the Employer hired contractors to reconstruct the doors in the office to include windows, which was completed in early April. (1:46:35-1:47:26; Exhibit C) The reason for the change was because the Employer had been in the building for ten years and had reconfigured the office prior to the Claimant’s employment. However, beginning in 2007, the office had more foot traffic; and the hire in January 2016 increased the office foot traffic, which created a concern that employees could easily walk in on meetings. (1:48:26-1:50:15)

The Claimant had been seeing a psychiatrist for which he informed DePauw on April 20, 2016, that he was diagnosed with post-traumatic stress disorder (PTSD). (1:02:00-1:02:12; 1:29:10-1:29:22; 1:42:48-1:43:14) Mr. Gerth did not ask DePauw to change anything about his employment, except to request that he be allowed to keep his door shut for separation purposes, which the Employer obliged. (1:20:43-1:21:10; 1:22:23-1:22:32; 1:43:35-1:44:07; 1:51:40-1:51:42) The Claimant made no request to cover up the window that had been installed. (1:19:46-1:20:27) On Monday, May 23<sup>rd</sup>, the Claimant informed the Employer that he was amending his civil rights complaint to include a medical claim because he believed the window was installed in retaliation to his initial civil rights complaint. (1:03:40-1:03:53)

The Employer heard that Mr. Gerth had recorded some of their conversations. (1:55:51-1:55:56) The Employer had never had an employee secretly record any conversations in the workplace. (1:25:35-1:26:20; 1:42:40-1:42:43) DePauw explained to the Claimant that there was an unwritten policy and

practice that disallowed recordings of any conversations in the workplace, which often involved peoples' confidential, financial information. (1:40:39-1:41:45; 1:55:09-1:56:11) On May 25, 2016, the Employer suspended the Claimant with pay for recording their conversations. (1:38:34-1:39:05; 1:56:14-1:56:37; 1:57:23-1:57:47; 2:04:50-2:04:56) The Claimant started packing his belongings and left the room so that he could contact his attorney. (1:39:10-1:39:56; 2:05:17) The Employer clarified to Mr. Gerth that he wasn't being terminated; rather, the Employer needed time to sort things out. (1:26:25-1:26:47; 1:56:45-1:57:09; 2:04:48-2:05:46)

The Claimant continued packing his belongings and left. The Employer was surprised because they didn't expect Gerth to quit. (1:21:22-1:21:30; 1:51:48; 2:02:05-2:02:14) The Claimant never submitted any medical documentation that he needed accommodation (1:57:54-1:58:05); nor was there any request for accommodation. (1:58:06-1:58:17)

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 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...

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998)

871 IAC 24.26(5) provides a quit is with good cause attributable to the employer when, "The claimant left due to intolerable or detrimental working conditions."

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The record establishes that the Claimant began having concerns after the Employer called him into the January 14<sup>th</sup> meeting to discuss his overall attitude and performance with the company. While Robeson voiced his concerns about the Claimant's seemingly disrespectful attitude toward him, and the Claimant's reluctance to perform the full scope of his duties, the Claimant continuously attempted to put the onus on the Employer about the concerns being raised. The record supports that both parties agreed that Gerth would continue his employment and that they would work on their differences.

Although the Claimant argued that he suffered harassment from Robeson that resulted in his age discrimination complaint, he continued working another four months under what he perceived was a singled-out, intense scrutiny. The fact that he continued working for such an extended period of time diminishes his argument that he was, essentially, working under detrimental and intolerable working conditions, and that he was forced to quit because of it.

As for his testimony regarding his amended civil rights claim, which included PTSD, that the Employer purportedly refused to accommodate, the record contains no evidence to support that Gerth's medical condition was, in fact, caused or aggravated by his employment, or that the Employer was asked, and refused to accommodate him.

871 IAC 24.26(6)"b" provides:

*Employment related separation.* The claimant was compelled to leave employment because of an illness injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of the employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The Employer did not dispute that the Claimant had PTSD. (1:02:20-1:02:38) The Claimant's argument that the Employer retaliated against him for filing a complaint by installing a window on his door, in the first place, fails. The Employer provided a credible and cogent explanation that the window installation had been in the works for a period of time long before the Claimant had been employed. Additionally, when Gerth requested that he keep his door closed to separate himself from Robeson, DePauw allowed him that. The Claimant never requested to have the window covered up. It was only on May 23<sup>rd</sup> when Gerth put the Employer on notice of his amended civil rights complaint that the Employer became aware that Gerth believed the window was in retaliation to his first complaint. The Employer did not refuse to cover up the window; and it had no reasonable opportunity to accommodate him even if he specifically asked for it.

Mr. Gerth testified that he quit upon the advice of his psychiatrist. But the record contains no medical documentation to corroborate this testimony. The record is also void of any evidence that the Claimant put the Employer on notice that if the Employer did *not* accommodate the Claimant's condition, he would quit, which is required by the aforementioned administrative rule. See, 871 IAC 24.26(6)"b", *supra*.

The Claimant cannot argue that he was terminated, as the Employer never told the Claimant he was going to be discharged. (1:26:25-1:26:47) The Claimant was suspended pending further investigation into the secret recording of employee/employer conversations in the workplace. It was the Claimant's decision to pack up and leave the premises, which can be reasonably characterized as the initiation of his own separation.

871 IAC 24.1(113) "b" provides:

*Separations.* All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

*Quits.* A quit is 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.

Based on this record, the Claimant's quit cannot be attributed to the Employer, as he failed to put the Employer on notice that he would quit if his request for accommodation for his medical condition was not granted. For this reason, we would conclude that the Claimant failed to satisfy his burden of proof. Benefits should be denied until such time he has worked in and was paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(1)"g".

**DECISION:**

The administrative law judge's decision dated July 15, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit without good cause attributable to the Employer. Accordingly, he is denied benefits until such time he has worked in and was paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(1)"g".

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