

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACEY J DEMORY
Claimant

CITY OF DES MOINES
Employer

APPEAL 21A-UI-01349-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/04/20
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 15, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 17, 2021, at 3:00 p.m. Claimant participated with her attorney Jerry Jackson. Mike Watts and Tammy Johnston were witnesses for claimant. Employer participated through Luke DeSmet, Assistant City Attorney. Allison Lambert, Senior Human Resources Business Partner, and Bradley Kress, Police Sergeant, were witnesses for employer. Claimant's Exhibit 2 was admitted. Employer's Exhibit A was admitted.

ISSUE:

Whether claimant's separation was a voluntary quit without 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 as a full-time Senior Public Safety Dispatcher from April 21, 1991 until her employment with the City of Des Moines ended on October 2, 2020.

Claimant received a written warning during the summer of 2020 for leaving work early without notifying employer. Claimant had received no prior disciplinary action and was surprised by the warning. She did not contest the warning.

On September 11, 2020, claimant left work ten minutes earlier than employer authorized. Claimant requested a pre-disciplinary hearing. The hearing was held on September 24, 2020. As a result of the hearing, claimant was told that she would receive a written warning and would be required to provide a doctor's excuse for any absences due to illness for the next six months. On October 1, 2020, claimant received a copy of the written warning dated September 17, 2020 or September 18, 2020. The written warning stated that claimant must provide a doctor's excuse for any absences due to illness for the next 12 months. Claimant believed that the warning was inconsistent with what she was told at the hearing. Claimant did not bring the inconsistency to employer's attention or seek clarification. Claimant did not use her union's grievance process.

On October 2, 2020, claimant reported to work and requested the day off. Employer denied claimant's request. A short time later, claimant packed up her belongings, gave her identification badge and access fob to a supervisor, said "I'm done" and left the premises. Employer had continuing work available for claimant. Notwithstanding the two written warnings, claimant's job was not in jeopardy.

Claimant quit because she felt attacked by Captain Edwards. Claimant believed that Edwards was causing her recent disciplinary action by forcing or coercing other employees to issue written warnings. Claimant believes Edwards was retaliating against her for taking family medical leave in 2019 because her leave resulted in employer paying overtime wages to employees. Captain Edwards did not complain to claimant about her leave or paying overtime. Claimant's other evidence of retaliation was that Edwards glared at her when Sergeant Sprague issued the first written warning.

Employer's disciplinary process includes many steps. When an employee is disciplined, the supervisor submits a recommendation for discipline up the chain of command. The recommendation is reviewed by the Office of Professional Regulation before submission to the Chief of Police for authorization.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit without good cause attributable to employer. Benefits are denied.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, 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 means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Where a claimant gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.26(4) 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:

- (4) The claimant left due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.25(21), (22), (28) provide:

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:

- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.
- (28) The claimant left after being reprimanded.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find employer's testimony to be more credible than claimant's testimony. Claimant alleges that her two written warnings are a result of retaliation by Captain Edwards. Claimant's evidence of retaliation are the two warnings themselves – because she had no prior warnings. The mere existence of the warnings is not proof of retaliation. Claimant did not deny the underlying events that led to the warnings. Furthermore, claimant's allegation of retaliation by Captain Edwards is not supported by employer's disciplinary process, which requires several levels of review and approval.

Claimant's verbal resignation is both evidence of her intention terminate the employment relationship and an overt act of carrying out her intention. Claimant voluntarily quit her employment. Claimant has not established that she quit due to intolerable or detrimental working conditions. Claimant's reasons for quitting can best be described as dissatisfaction with the work environment, a personality conflict with a supervisor and a result of being reprimanded.

Claimant has not established that she quit for good cause attributable to employer. Accordingly, benefits are denied.

DECISION:

The December 15, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant quit without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Adrienne C. Williamson
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March 3, 2021
Decision Dated and Mailed

acw/mh